

Doing Business in Kazakhstan

2016



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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 77 offices across 47 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 USSR and the Commonwealth of Independent States (CIS) for over 40 years, with offices in Almaty, Baku, Kyiv, Moscow and St. Petersburg, we now have one of the largest legal practices in the CIS, offering expertise (in close cooperation with our offices worldwide) on all aspects of investment in the region 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 - CIS, Limited 1 January 2016

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 area 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 the Kyrgyz Republic 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°C in winter to +30°C in summer.

1.2 Population

The population of Kazakhstan is approximately 17.5 million, with approximately 1.7 million living in Almaty, the largest city, and a further 880,000 in Astana, the second largest city, making Kazakhstan one of the most sparsely populated countries in the world, with a population density of approximately six people per square kilometer. Approximately 66% of the population is Kazakh, and approximately 21% 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. By virtue of many ethno-political and economic factors three ethno-territorial associations were formed in the territory of Kazakhstan: the Senior, Middle and Junior Juzes. The division into juzes was the result of a complex process - the formation of the Kazakh ethnic national group, and left its characteristic stamp on local cultural and political affiliations. The Kazakh Khanate was absorbed into the Russian Empire in the 18th and 19th centuries and transformed into other forms of governance that reported to Russia.

After the Great October Revolution the Bolsheviks took control over the territory. On 5 December 1936 Kazakhstan was made a constituent republic of the Soviet Union and named the Kazakh Soviet Socialist Republic.

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

1.4 Government and Political System

The President of Kazakhstan is Nursultan Nazarbayev who, before being elected President in 1991, was appointed First Secretary of the Communist Party of Kazakhstan in 1989.

Nazarbayev was first elected President on 1 December 1991 for a five-year term. On 29 April 1995 his first term was extended until 2000. On 10 January 1999 he was reelected for a seven-year term (until the end of 2005). On 4 December 2005 he was reelected for another seven-year term (until the end of 2012). On 3 April 2011 an early presidential election was held in which Nazarbayev ran as candidate of the Nur Otan party. He won the election which would have let him remain in office until December 2016. On 26 April 2015 Nazarbayev was re-elected until April 2020 during an early election.

The President is the head of state and commander-in-chief of the armed forces. He has primary responsibility for domestic and foreign policy and represents Kazakhstan in international relations. Under the 1995 Constitution,¹ the President is elected for a term of five years and may be reelected for a second term. While the same person may not be elected President of Kazakhstan more than twice consecutively this limitation does not apply to the First President of Kazakhstan (Mr. Nazarbayev).

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

The President exercises broad powers under the Constitution and has the authority to issue decrees, initiate constitutional amendments, dissolve Parliament, veto legislation, appoint and dissolve the Government and appoint local heads of government. Under certain circumstances the President may issue decrees which 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 the city with republican status,³ 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 for five-year terms. The Mazhilis consists of 107 members, 98 of whom are elected based on political party lists. Nine members are elected by the Assembly of the People of Kazakhstan.

The Government is appointed by the President and is accountable to him. The Government is headed by the Prime Minister. At the cabinet level, the Government is comprised of the Chancellery of the Prime Minister and 14 ministries.

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

A separate Constitutional Council with seven members is the guardian of the Constitution. Its duties include: reviewing issues concerning the election of the President and members of Parliament, national referenda, issues involving the President (including relieving him of

² There are 14 oblasts: Almaty, Akmola, Aktobe, Atyrau, Pavlodar, Karaganda, Kostanai, Kyzyl-Orda, Eastern Kazakhstan, Western Kazakhstan, Mangistau, Northern Kazakhstan, Southern Kazakhstan and Zhambyl.

³ Currently Almaty is the only city with republican status.

⁴ For a more detailed description of the court system, see Section 16.

his duties on grounds of treason or for medical reasons), determining whether laws proposed for adoption by Parliament or through international treaties comply with the Constitution, providing official interpretations of the Constitution, and reviewing appeals from courts of law on constitutional issues.

The political party system is in the initial stages of development. The principal party is Nur Otan, with other main political parties including Ak Zhol, the Communist People's Party of Kazakhstan, and OSDP and Auyt. Nur Otan has won all parliamentary elections held since 1991.

The last parliamentary election was held in January 2012. As a result of this election Nur Otan received 80.99% of the votes and 83 seats, Ak Zhol received 7.47% of the votes and 8 seats and the Communist People's Party of Kazakhstan received 7.19% of the votes and 7 seats.

On 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" ("capital" in Kazakh). The Parliament and Government have moved to 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. Development of these natural resources has been hindered by the fact that Kazakhstan is a landlocked country, giving

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

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 the Republic of Kazakhstan and encouraged moves towards full convertibility of the Kazakhstani Tenge (“tenge” or “KZT”), as well as 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 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 2012 and 2013 real GDP grew by approximately 5% and 6% respectively. In 2014 real GDP grew by approximately 1.2%. In 2015 GDP grew by 5%. According to the Government, GDP is expected to grow by 2.1% in 2016.

Since the free float in 1999, and after an initial decline, the tenge has been relatively stable and slowly appreciated against the US dollar due to an influx of money from raw materials when the market has boomed. In February 2009 there was the first major (20%) devaluation. The second major devaluation came in February 2014 when the National Bank of Kazakhstan implemented another 20% devaluation, away from the previous rate of 155 tenge per US dollar to the new weighted average of 185 tenge per US dollar. 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 the US dollar. In December 2015 the dollar reached the rate of 340 tenge.

The Government of Kazakhstan 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 commodities markets. Nevertheless, by the end of October 2000, the Government reported that over 80% of businesses in the country were privately owned. The privatization program continues to be implemented by the Committee for State Property and Privatization of the Ministry of Finance.

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 in order 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. The main task facing Kazakhstan in the medium and long term, therefore, lies in successful diversification of its economy. 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 over 130 countries. It is a member of the Commonwealth of Independent States (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 a Partnership and Cooperation Agreement with the European Union, with a view to establishing closer economic and political ties. The European Union and the United States have recognized Kazakhstan as a country with a market economy. Kazakhstan has acceded to many major international conventions and became a member of the World Trade Organization 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 and Uzbekistan, Kazakhstan is a member of the Shanghai Cooperation Organization. Originally formed to deal with matters of border control, this organization now deals with combating terrorism, drug and weapon smuggling, and other issues.

In 2007 Belarus, Kazakhstan and Russia formed a Customs Union which aimed to eliminate interstate customs borders and customs clearance. With effect from 1 January 2015 the Customs Union was replaced by a Eurasian Economic Union (EEU), a multinational international organization which aims to promote cooperation among member countries in a number of areas including harmonization of macroeconomic policies, taxes, customs matters, non-tariff regulation (such as import licenses and certificates of compliance), financial matters, intellectual property, procurement, energy, labor migration, transportation etc. The current members of the EEU are Belarus, Kazakhstan, Russia, Armenia and Kyrgyzstan.

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 Investment and Development. Among other things, the Committee on Investments is charged with negotiating and concluding investment contracts with investors pursuant to the *Entrepreneurial Code* (see Section 2.3 below).

The Committee of Geology and Subsoil Use Rights of the Ministry of Investment and Development is responsible for the execution of subsoil use contracts for mining projects.

The Ministry of Energy is responsible for the execution of subsoil use contracts involving oil and gas.

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. Mr. Asset Issekeshov (the Minister of Investment and Development) has been appointed as investment ombudsman.

2.2 Investment Protections

In October 2015 the *Entrepreneurial Code* was adopted in Kazakhstan which superseded the Law on Investments. The code retained most of the earlier investment guarantees, such as: stability of contracts (with certain exceptions), free use of income, transparency of state investment policy, 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 industrialization and diversification of Kazakhstan's economy, the *Entrepreneurial Code* creates a system of benefits and preferences which supports direct investments in certain areas. These areas include production of certain types of equipment, pharmaceuticals and food, metallurgy, agriculture and construction. The full list of eligible areas is approved by the Government.⁶

For the purposes of determining eligible investment preferences, investment projects are divided into the following categories:

- an ordinary investment project, which is aimed at creation of new and extension and modernization of existing production facilities;
- a priority investment project, which: (a) is to be implemented in certain limited areas by a newly established local entity that derives at least 90% of its income from this project; and (ii) anticipates investments of not less than USD 12.5 million; and
- a strategic investment project, which is a project that can have a strategic impact on the economic development of the Republic of Kazakhstan and is included in a special Government list and for which the investment contract was signed before 1 January 2015.

The following investment preferences are available for ordinary investment projects:

- an exemption from customs duties (for a period up to five years) and from VAT on imported equipment and

⁶ Resolution of the Government of the Republic of Kazakhstan dated 8 May 2003 *On Certain Matters Pertaining to Implementation of the Law of the Republic of Kazakhstan On Investments*.

components, and raw materials required for investment projects;

- exemption from VAT on importation of raw and/or other materials under the investment contract (effective from 1 January 2017); and
- state in-kind grants, i.e. assets (land plots, buildings, facilities, machines and equipment, computers, measuring and controlling instruments and devices, vehicles (save for automobiles), 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 the property of the investor. The value of these grants cannot exceed 30% of the total planned investment into the fixed assets of the local entity.

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

- tax preferences in the form of corporate income tax, land tax and property tax exemptions (for up to 10 years); and
- an investment subsidy of compensation by the Government of up to 30% of the costs relating to construction, assembly and acquisition of equipment (the subsidy should be approved by a separate Government resolution in each case);
- stability of tax laws;
- stability of labor laws; and
- assistance to contract holders on a one-stop-shop basis from the Committee on Investments with respect to liaison with various state agencies.

To receive these investment benefits a local company (for priority contracts this must be a newly established local company) must sign an investment contract with the Committee on Investments setting forth the investment commitments of the investor, the duration of the investment project, and the benefits granted. The investment contract should be registered by the committee in order to be valid.

In addition to these benefits, the *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 afterwards) 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 in order to obtain this right.

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 issuance of state guarantees for bank loans.

2.4 Bilateral Investment Treaties

Kazakhstan has concluded bilateral treaties on encouragement and mutual protection of investments with 44 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.

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
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.	Italy	22 September 1994	18 June 1996
21.	Japan	23 October 2014	Not effective yet
22.	Jordan	29 November 2006	1 July 2008
23.	Republic of Korea	20 March 1996	26 December 1996

No.	Country	Signing Date	Effective Date
24.	Kuwait	31 August 1997	1 May 2000
25.	Kyrgyzstan	8 April 1997	1 June 2005
26.	Latvia	8 October 2004	21 April 2006
27.	Lithuania	15 September 1994	25 May 1995
28.	Macedonia	2 July 2012	Not effective yet
29.	Malaysia	27 May 1996	3 August 1997
30.	Mongolia	2 December 1994	13 May 1995
31.	Netherlands	27 November 2002	1 August 2007
32.	Pakistan	8 December 2003	7 December 2009
33.	Poland	21 September 1994	25 May 1995
34.	Qatar	4 March 2008	Not effective yet
35.	Romania	25 April 1996	5 April 1997
36.	Russia	6 July 1998	11 February 2000
37.	Serbia	07 October 2010	Not effective yet
38.	Slovakia	21 November 2007	Not effective yet
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.	Turkey	1 May 1992	10 August 1995
44.	Ukraine	17 September 1994	4 August 1995
45.	United Kingdom	23 November 1995	9 January 1997
46.	USA	19 May 1992	12 January 1994
47.	Uzbekistan	2 June 1997	8 September 1997
48.	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. Establishing a Legal Presence

To create a legal presence in Kazakhstan, foreign investors may:

- establish a branch or representative office; and/or
- establish a Kazakhstani legal entity that is either entirely foreign-owned, or co-owned as a joint venture with a Kazakhstani partner.

3.1 Representative Offices and Branches of Foreign Legal Entities

3.1.1 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 which may fulfil all or part of the functions of its parent company, including activities generating income. Both representative offices and branches act on the basis of “Regulations” (similar to a charter or bylaws), and are managed by an individual authorized by the parent company under a power of attorney.

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. However, unlike Kazakhstani legal entities, representative offices and branches may make payments to and receive payments from Kazakhstani residents in foreign currencies.

3.1.2 Registration

Representative offices and branches must be registered with the relevant regional department of the Ministry of Justice. The general fee for state registration of a representative office or branch is KZT13,786.5 (approximately US\$37).

In order to register a branch or representative office, the parent company must submit the following documents to the registration authorities of the Ministry of Justice:

- an application to establish the branch or representative office;
- an extract from the trade register or certificate of registration certifying that the parent company is a validly existing legal entity under the legislation of its home country or a copy of the articles of association (or equivalent) of the parent entity;
- a document confirming the tax registration number of the parent company in the country of incorporation;
- confirmation of payment of the state registration fee.

Documents from a foreign parent entity must be notarized and apostilled (or legalized)⁷ in its home country. Any document written in

⁷ Apostilles can be appended only 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

a language other than Kazakh or Russian must be accompanied by a notarized translation into Kazakh and Russian.

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:

- registration for VAT (if necessary)⁸ and
- opening of bank accounts.

Under recent changes to corporate law, privately owned companies are no longer required to have a corporate seal unless this is specifically required by Kazakhstani law.

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

3.2 Forming a Kazakhstani Legal Entity

Kazakhstani law recognizes the following types of legal entities:

- general partnerships;
- limited partnerships;
- limited liability partnerships;

embassy or consulate of the Republic of Kazakhstan in the relevant country and by the relevant department of the Ministry of Foreign Affairs in Kazakhstan.

⁸ Registration for VAT purposes is necessary only if the turnover of a company over a calendar year exceeds KZT63,630,000 (approximately US\$170,000). It is, however, generally possible to register on a voluntary basis.

- additional liability partnerships; and
- joint stock companies.

However, only limited liability partnerships and joint stock companies are common.

The principal laws regulating legal entities are the *Civil Code*, the Law on *Limited and Additional Liability Partnerships*,⁹ and the *Law on Joint Stock Companies*.¹⁰

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 charter of a legal entity, 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.

3.3 Limited Liability Partnerships

3.3.1 Legal Form and Number of Participants

The limited liability partnership (“LLP”) is the most frequently used business vehicle in Kazakhstan. An LLP is a partnership with limited liability, established by one or more persons or legal entities (the “participants”). The charter capital of an LLP 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. As a general rule, the participants in an LLP are not themselves directly liable for the obligations and

⁹ The *Law on Limited and Additional Liability Partnerships*, dated 22 April 1998.

¹⁰ The *Law on Joint Stock Companies*, dated 13 May 2003.

liabilities of the LLP, and bear the risk of losses associated with the activity of the LLP only to the extent of their contributions.

There are no limits on the maximum number of participants in an LLP. Likewise, an LLP can be established by a single participant. However, an LLP may not have as its sole participant another partnership consisting of one person or entity. Other participants in an LLP 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.

3.3.2 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”)¹¹ on the date when the founding documents are submitted for state registration. Currently, this minimum amount is equivalent to approximately US\$570 (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.

3.3.3 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.

¹¹ The MCI is an index used to calculate pensions, benefits and other social payments, as well as fines and penalties, tax payments and other payments in accordance with current legislation. The MCI is 2,121 tenge effective 1 January 2016 pursuant to the *Law on the Republican Budget for 2016-2018*, dated 30 November 2015.

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

- amendments to the charter;
- increasing and decreasing the charter capital of the LLP;
- establishment of the executive body, supervisory council and/or audit commission and early termination of their powers;
- adoption of a resolution on transferring the LLP or its assets into trust management;
- approval of the annual financial reports and the distribution of profits;
- participation in other legal entities;
- reorganization or liquidation of the LLP, appointment of a liquidation commission and approval of the liquidation balance sheet;
- approval of internal regulations of the LLP;
- pledging of all of the LLP's assets;
- decisions on forced buyouts of a participant's share; and
- additional contributions to the LLP's assets.

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

The charter of the LLP 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. Also it may cancel any

decision of lower corporate bodies on matters relating to internal activities of the LLP.

The LLP must have an executive body (collective or individual), responsible for managing the LLP's day-to-day business.

The LLP may also have a supervisory council to supervise and control the activities of the executive body.

3.3.4 Registration of LLPs which are medium-sized and large businesses¹²

In order to establish a medium-sized or large LLP, the following documents must be submitted to the relevant branch of the Ministry of Justice or to the Ministry of Justice via the Public Service Center or via the e-government portal:

- an application ;
- if one of the founders of the LLP is a foreign legal entity, an 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 copy of his/her passport;
- a document confirming payment of the state registration fee.

The fee for state registration of an LLP which is a large business is KZT 13,786.50 (approximately US\$37 as of the date of publication). There is no fee for state registration of an LLP which is a medium-sized business.

¹² An LLP with more than 250 employees and (or) with annual income in excess of 3,000,000 MCIs is considered a large business. An LLP with no more than 100 employees and annual income of no more than 300,000 MCIs is considered a small business. All other LLPs are considered medium businesses.

Documents signed by a foreign legal entity must be notarized and apostilled (or legalized) in its home country. Any documents supplied in a language other than Kazakh or Russian must be accompanied by a notarized translation into Kazakh and Russian.

The appropriate registration body is required to complete the state registration of the LLP and to 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:

- registration for VAT (if necessary);
- registration of any charter capital contribution by a foreign founder with the National Bank of Kazakhstan (if such contribution exceeds US\$500,000) and
- opening of bank accounts.

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

3.3.5 Registration of LLPs which are small businesses

The establishment of an LLP that is a small business requires the submission of a notification to the relevant branch of the Ministry of Justice or to the Ministry of Justice via the e-government portal. There is no fee for state registration of such an LLP.

If one of the founders of the LLP is a foreign legal entity, an extract from the trade register, or any other document that confirms that the founder is a valid legal entity under the legislation of its home

country, should be attached to the notification. If one of the founders is an individual, a notarized copy of his/her passport has to be submitted.

Documents from a foreign legal entity must be notarized and apostilled (or legalized) in its home country. Any documents supplied in a language other than Kazakh or Russian must be accompanied by a notarized translation into Kazakh and Russian.

The registration body should complete the state registration of the LLP and issue a certificate of state registration one business day after the notification is submitted. If the notification is submitted via the e-government portal the state registration should be completed within one hour of the notification being submitted.

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

- registration for VAT (if necessary);
- registration of any charter capital contribution by a foreign founder with the National Bank of Kazakhstan (if such contribution exceeds US\$500,000) and
- opening of bank accounts.

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

3.4 Joint Stock Companies

3.4.1 Legal Form and Number of Participants

A joint stock company (“JSC”) is a legal entity which issues shares in order to raise capital for its activities. As a general rule the shareholders of a JSC are not liable for the obligations of the JSC and bear the risk of losses only 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.

3.4.2 Formation of a Joint Stock Company

The founders of a JSC may include individuals and/or 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 state registration of the share issue.

3.4.3 Charter Capital

The minimum charter capital requirement for a JSC is 50,000 times the MCI (approximately US\$283,556 as of the date of this publication). The minimum charter capital must be paid in full within 30 days of state registration of the JSC.

3.4.4 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, as a general rule, 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.

3.4.5 Management Structure

The general meeting of shareholders is the supreme authority 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 board of directors of the JSC and early termination of its powers;
- increase in the number of authorized shares;
- approval of the annual financial reports of the JSC; and
- 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 may 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 and 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.

In order 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.

3.4.6 Registration

A JSC must be registered with the Ministry of Justice. The fee for state registration of a JSC is KZT 13,786.50 (approximately US\$37 as of the date of this guide).

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

- an application;
- the notarized charter of the JSC;
- if one of the founders is a foreign legal entity, an 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 copy of his/her passport;
- a document confirming payment of the state registration fee.

Documents from a foreign legal entity must be notarized and apostilled (or legalized) in its home country. Any documents supplied in a language other than Kazakh or Russian must be accompanied by a notarized translation into Kazakh or Russian.

Within 14 business days after submission of all required documents, the registration body must issue a certificate of state registration of the JSC.

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

- registration for payment of VAT (if necessary);
- registration of the share issue with the National Bank of Kazakhstan;
- registration of charter capital contributions with the National Bank of Kazakhstan (if such contribution exceeds US\$500,000) and
- opening of bank accounts.

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

3.5 Issue and Registration of Securities

3.5.1 Introduction

The securities market in Kazakhstan is regulated principally by the *Law on the Securities Market*¹³ and the *Law on Joint Stock Companies*. The National Bank of Kazakhstan is authorized by the state to regulate activities on the securities market.

Under the legislation of Kazakhstan, the following constitute securities:

- shares and bonds;

¹³ The *Law on the Securities Market*, dated 2 July 2003, as amended.

- derivatives (as defined in law);
- securities of foreign issuers;
- mortgage certificates;
- warehouse certificates; and
- other types of securities.

3.5.2 Issue and Placement of Securities

Pursuant to the *Law on the Securities Market*, securities can be placed only after their issue 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.

3.5.3 Additional Share Issues

Under the *Law on Joint Stock Companies*, the state, acting through the tax office with a court's consent, may force a JSC with state participation to issue new shares to new shareholders with the proceeds being utilized to pay taxes and other overdue payments to the state budget.

3.5.4 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 signed by the JSC. JSCs are also required to disclose certain information to their shareholders, including information on share issues, entry into major and interested-party transactions, pledges of 5% or more of the assets of the JSC and participation by a JSC in other legal entities.

In addition, JSCs are required to report to the National Bank on the results of their share placements on a six-monthly basis.

3.5.5 Special Disclosure Requirements

Anyone intending to acquire 30% or more of the shares in a JSC must notify the JSC and the National Bank. 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, the purchaser must, within 30 days from the date of acquisition, publish an offer to the remaining shareholders to purchase their shares at a price not lower than the average market price of the JSC's shares. If the remaining shareholders agree to sell their shares, the purchaser has 30 days in which to pay.

3.6 Regulation of the Securities Market

3.6.1 Activities Requiring a License

Legal entities that have obtained a valid license from the National Bank may conduct the following activities on the securities market:

- brokerage;
- dealing;
- custodial activities;
- portfolio management;
- transfer agent activity;
- pension fund management;
- clearing activity in transactions with financial instruments; and
- organization of trade in securities and other financial instruments.

3.6.2 Stock Exchanges

There is only one licensed stock exchange in Kazakhstan - the Kazakhstan Stock Exchange (the “KASE”). The KASE has more than 100 companies listed on it.

4. Licenses, Permits and Notifications

4.1 Introduction

Over 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 interaction with the licensing authorities, (ii) imposing a uniform timeframe 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* (the “*Law on Permits*”).¹⁴ 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*” (so-called “*first category permits*”);
- (ii) medium risk activities require “*permits*” (so-called “*second category permits*”);
- (iii) low risk activities require “*notifications*” to the relevant authorities.

¹⁴ Law No. 202-V *On Permits and Notifications*, dated 16 May 2014.

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

4.2 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 the Public Service Center. It is now also possible to submit documents via the e-government portal.¹⁵

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 days) is allowed for certain activities (e.g., use of atomic energy, import and export of products covered by export control rules, etc.).

4.3 Consequences of Operating without a Permit

Operating without a permit (or without submitting the mandatory notification) may result in administrative and criminal punishments (i.e., fines and 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 of Kazakhstan, operating without the appropriate license could result in compulsory liquidation.

¹⁵ Notifications should also be made via the Public Service Center or via the e-government portal.

5. Taxation

5.1 General

On 10 December 2008 Kazakhstan adopted a tax code (the “*Tax Code*”),¹⁶ designed to replace the earlier Tax Code of 12 June 2001. The *Tax Code* came into force on 1 January 2009.

President Nazarbayev initiated the adoption of the *Tax Code* in early 2008 with the stated objectives of promoting modernization and diversification of Kazakhstan’s economy and incentivizing business to “come out of the shadows.”

In line with these objectives, one of the primary aims of the *Tax Code* is to reduce the overall tax burden on non-extractive sectors, thus making them more attractive for potential investors. This reduction is compensated for by subsoil users (i.e., mining and oil and gas companies) whose tax burden has been significantly increased.

At the end of 2015 the Government announced its plans to adopt a new code which will combine the *Tax Code* and *Customs Code* of Kazakhstan. One of the stated objectives of this initiative is to manage the current global crisis and stimulate the country’s economy via a new fiscal policy. According to the statements of the Government, the new code will be submitted to the Parliament for approval before 1 September 2016.

5.2 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, provision of services in Kazakhstan for a certain period of time, as well as an agent with contract signing authority). In

¹⁶ Code of the Republic of Kazakhstan *On Taxes and Other Mandatory Payments to the Budget (Tax Code)*, dated 10 December 2008.

addition, the registration requirement applies in certain other circumstances (e.g., where a foreign company owns immovable property or opens a bank account in Kazakhstan).

5.3 Taxes

Taxes payable in Kazakhstan include corporate and individual income taxes; value added tax (“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.

5.4 Income Tax

5.4.1 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 the so-called “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.

5.4.2 Withholding Tax

A nonresident that does not have a PE in Kazakhstan is generally subject to withholding tax on Kazakhstani source income at the following rates:

Table 3: 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 which 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 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 (an interest) 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) not 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 purpose of this exemption, companies that extract underground water for their own needs are not considered subsoil use companies.

The above exemption will apply to local mining and oil and gas companies with effect from 1 January 2016 until 31 December 2017. Thus, dividends paid by mining and oil and gas companies to foreign

shareholders (participants) will be exempt from the Kazakhstani withholding tax if (i) as of the date when the dividends are paid the recipient has owned shares (interest) 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 35% of extracted minerals using its own processing (enrichment) facilities. Dividends for these purposes include retained earnings for previous periods (capped at 30%).

Second, a nonresident without a PE in Kazakhstan will not be taxed on capital gains resulting from a sale of shares (an interest) in either local or offshore companies, if as of the date when the shares (interest) are sold: (i) the shares (interest) 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) not 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 purpose of this exemption, companies that extract underground water for their own needs are not considered subsoil use companies.

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 of Kazakhstan). Further, the exemptions do not apply if any of the above conditions are not met.

If the exemptions do not apply, then 15% withholding tax will generally 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 sale of shares). Relevant double tax treaties may provide relief from this tax.

5.4.3 Personal Income Tax

With certain limited exceptions, personal income of individuals is taxed at a flat rate of 10%. Residents pay income tax on their worldwide income (residents are defined as individuals who spend not 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 5.8 below). Pension fund contributions are not withheld from salary payments to nonresidents.

5.5 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 apply only (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.

Kazakhstan has entered into bilateral treaties to avoid double taxation with 48 countries to date. Below is a table listing these countries and indicating the reduced rates of income tax applicable under the treaties for certain categories of income.¹⁷

¹⁷ Please note that the reduction of income tax rates under most treaties is allowable only upon satisfaction of certain conditions. For example, the income tax on royalties under most treaties may be reduced only if the recipient is the beneficial owner of royalties. Therefore, the relevant treaty and circumstances must be examined in each case in order to ascertain whether a certain category of income is subject to taxation at a reduced rate.

Table 4: Double Tax Treaties

No.	Country	Dividends¹⁸ (%)	Interest (%)	Royalties (%)	Branch Profit Tax (%)
1	Armenia	10	10	10	5
2	Austria*	5/10 15	10	10	5
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	Czech Republic	10	10	10	5
10	Estonia*	5/25 15	10	15	5
11	Finland*	5/10 15	10	10	5
12	France*	5/10 15	10	15	5

¹⁸ 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 should be 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 the 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	Dividends¹⁸ (%)	Interest (%)	Royalties (%)	Branch Profit Tax (%)
13	Georgia	15	10	10	5
14	Germany*	5/25 15	10	10	5
15	Hungary*	5/25 15	10	10	5
16	India	10	10	10	10
17	Iran*	5/20 15	10	10	5
18	Italy*	5/10 15	10	10	5
19	Japan*	5/10 15	10	10	Not specified
20	Korea*	5/10 15	10	10	Not specified
21	Kyrgyzstan	10	10	10	10
22	Latvia*	5/25 15	10	10	5
23	Lithuania	5/25 15	10	10	5
24	Luxembourg*	5/10 15	10	10	10
25	Macedonia	5/25 15	10	10	5
26	Malaysia	10	10	10	10
27	Moldova*	10/25 15	10	10	5
28	Mongolia	10	10	10	10
29	Netherlands*	5/10	10	10	5

No.	Country	Dividends¹⁸ (%)	Interest (%)	Royalties (%)	Branch Profit Tax (%)
		15			
30	Norway*	5/10 15	10	10	5
31	Pakistan*	12.5/10 15	12.5	15	Not specified
32	Poland*	10/20 15	10	10	10
33	Romania	10	10	10	15
34	Russia	10	10	10	10
35	Singapore	5/25 10	10	10	5
36	Slovakia*	10/30 10	10	10	5
37	Spain*	5/10 15	10	10	5
38	Sweden*	5/10 15	10	10	5
39	Switzerland*	5/10 15	10	10	5
40	Tajikistan*	10/30 15	10	10	10
41	Turkey	10	10	10	10
42	Turkmenistan	10	10	10	5
43	Ukraine*	5/25 15	10	10	5
44	United Arab Emirates*	5/10 15	10	10	5

No.	Country	Dividends ¹⁸ (%)	Interest (%)	Royalties (%)	Branch Profit Tax (%)
45	United Kingdom*	5/10 15	10	10	5
46	USA*	5/10 15	10	10	5
47	Uzbekistan	10	10	10	15
48	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.

5.6 Value Added Tax (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 by foreign companies that have a branch or a representative office in Kazakhstan, provided they are registered as VAT payers. The obligation to register is triggered when the taxable turnover of the taxpayer in Kazakhstan exceeds 30,000 times the monthly calculation index (currently KZT 63,630,000 or approximately US\$170,000 in a calendar year). However, it is possible to register as a VAT payer on a voluntary basis (with effect from 1 January 2017, voluntary VAT registration will be abolished).

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

Generally the excess of input VAT over output VAT should be refunded to the VAT payer. However please note that from 1 January 2011 until 1 January 2022 cash VAT refunds will only be available for reverse charge VAT; i.e. VAT paid on works and services procured from foreign companies with no presence in Kazakhstan. Other types of input VAT can only be offset against output VAT. Most taxpayers will have to undergo a tax audit in order to obtain a refund (certain large taxpayers are entitled to an automatic refund). From 2022 tax audits will only be necessary for taxpayers flagged up by a risk management system operated by the tax authorities.

In 2015 the Government made a public statement of its intention to introduce sales tax instead of VAT. Currently the prospects and timeline for introduction of the sales tax are unclear.

5.7 Customs Duties

Kazakhstan imposes customs duties on the import of goods into Kazakhstan at rates that vary depending on the type of imported goods and 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 Eurasian Economic Union which is currently comprised of Kazakhstan, Russia, Belarus, Armenia and the Kyrgyz Republic. Also,

within the framework of the Eurasian Economic Union, the member countries have adopted a common customs code with unified customs rules and a common customs tariff setting, with limited exceptions, the same rates of import customs duties.

On 30 November 2015 Kazakhstan acceded to the World Trade Organization (WTO). In accordance with Kazakhstan's commitments as a WTO member, Kazakhstan will apply 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 Council of the Eurasian Economic Union 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 be used only in the territory of Kazakhstan and cannot be exported to other member states of the Eurasian Economic Union. It is possible, however, to import goods included into the list at the rates of the common customs tariff, in which case the relevant goods will acquire the status of goods of the Eurasian Economic Union and therefore will be allowed to be exported to other member states of the Eurasian Economic Union.

5.8 Withholding Obligations, Social Taxes and Charges

An employer must withhold personal income tax (see Section 5.4.3 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 11%.

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 5% of the income payable to employees (capped at approximately US\$620). 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 a new law *On Compulsory Social Medical Insurance* will become effective under which employers will be required to make compulsory contributions to the Social Medical Insurance Fund for the benefit of their employees. Employers will be required to make contributions to the fund at the rate of 2% of their employees' salaries, which rate will be increased gradually to 5% in 2020. These payments will be made at the employer's expense.

In addition, contributions to the Social Medical Insurance Fund will have to be made at the employees' expense. These contributions must be made at the rate of 1% of the employees' salaries from 1 January 2019 and 2% of their salary from 1 January 2020.

For the purpose of calculation of these payments to the fund an employee's salary will be capped at approximately US\$ 925.

5.9 Subsoil Use Taxes

5.9.1 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. With the adoption of the current *Tax Code* it is generally no longer possible to enter into a PSA, and 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.

5.9.2 Tax Stability of Subsoil Use Contracts

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

The *Tax Code* purportedly eliminated the tax stability of all other subsoil use agreements, including almost all concession agreements.

5.9.3 Specific Subsoil Use Taxes

Specific subsoil use taxes in Kazakhstan include the following:

A. *Signature Bonus*

A signature bonus is a one-time 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 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. *Commercial Discovery Bonus*

A commercial discovery bonus is a fixed payment payable by subsoil users when a commercial discovery is made in the contract territory. The rate of commercial discovery bonus is 0.1% of the value of proven extractable reserves.

D. Minerals Extraction Tax

Minerals extraction tax (“MET”) is the main tax that is intended to compensate for the reduction in the rate of corporate income tax (see Section 5.4.1 above).

For mining companies, 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 the 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) the MET is reduced by 50%.

E. 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%.

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).

5.10 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.

5.11 Special Economic Zones and Investment Benefits

A special economic zone (“SEZ”)¹⁹ may be established by the President of Kazakhstan (based upon a recommendation of the Government) with the aim of accelerating the development of Kazakhstani regions and attracting investment and technology to those regions.

The SEZ regime generally provides tax benefits to companies operating in a SEZ, not less than 90% of whose gross annual income comes from certain eligible types of activity (including the installation of computer software, the creation of information technologies, and the production of textile and knitted products).²⁰ The benefits vary depending on the type of SEZ, but generally they include the following:

- an exemption from corporate income tax;
- an exemption from land and property taxes; and
- an exemption from customs duties and levies for certain eligible goods imported into the SEZ which facilitate the aims of the SEZ

Each SEZ has its own eligible types of activity. The *Tax Code* provides a general list of such activities, while the Government approves a detailed list.

¹⁹ There are currently ten special economic zones in Kazakhstan.

²⁰ For companies operating in the SEZ “Park of Innovation Technologies” the applicable threshold is 70% of income from eligible activities.

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

With effect from 1 January 2016, companies operating within an SEZ will 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 the statutory limitation period.

5.12 Small Business Benefits

Legal entities with an income not exceeding approximately US\$173,000 over a 6-month period and less than 50 employees are entitled to pay corporate income tax and social tax at the aggregate rate of 3% of their income.

5.13 Transfer Pricing

On 5 July 2008, Kazakhstan adopted a transfer pricing law (the “*Transfer Pricing Law*”),²¹ which took effect on 1 January 2009. The *Transfer Pricing Law* superseded the country’s earlier transfer pricing law.²²

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 and assess unpaid/underpaid taxes and impose fines and penalties.

²¹ The Law *On Transfer Pricing*, dated 5 July 2008, as amended.

²² The Law *On State Control over the Use of Transfer Prices*, dated 5 January 2001, as amended.

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

- comparable uncontrolled price method;
- costs plus method;
- resale price method;
- profit split method; and
- transactional net margin method.

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

Transactions with certain goods (e.g., crude oil) are monitored on an ongoing basis by the state authorities for compliance with transfer pricing rules. Entities subject to monitoring must submit certain documents to the tax and customs authorities on a regular basis, including a justification of the prices charged, a functional analysis, financial reports, the transfer pricing methodology used, etc.

6. Currency Regulations

6.1 Introduction

Kazakhstan's currency, the tenge, was introduced in 1993. Following devaluation of tenge in 2009 and 2014, the exchange rate dropped from approximately 120 tenge to approximately 150 tenge per US\$ in 2009 and from approximately 150 tenge to approximately 184 tenge per US\$ in 2014. On 20 August 2015 Kazakhstan cancelled the trading band of US\$1 = 185 tenge + 13 tenge / - 15 tenge, thus allowing the tenge to float freely. This resulted in a one day drop of 23% from 197 tenge to 256.26 tenge per US\$ on 20 August 2015. As of 1 January 2016 the tenge traded at 340.01 per one US\$.

6.2 Foreign Exchange

In general, Kazakhstan's foreign currency regulations are not overly restrictive. The *Currency Law*²³ is the main piece of legislation governing foreign exchange transactions and currency regulation is generally implemented by the NBK.

6.2.1 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 NBK of the following transactions:

- opening bank accounts outside Kazakhstan (this requirement does not apply to individuals);
- acquisitions by residents of securities issued by foreign issuers if the purchase price exceeds US\$100,000 (this requirement does not apply to *direct investments*, i.e., acquisitions of 10% or more of the shares or participatory interests in foreign companies, which require *registration with*, rather than *notification of*, the NBK); and
- acquisitions by nonresidents of securities issued by local issuers if the purchase price exceeds US\$500,000 (except for *direct investments*, which require *registration with* the NBK).

²³ The law *On Currency Regulation and Currency Control*, dated 13 June 2005, as amended. The *Currency Law* took effect on 18 December 2005.

Also, residents must register the following transactions with nonresidents with the NBK (with certain limited exceptions) provided that the payment by a nonresident to a resident exceeds US\$500,000 or the payment by a resident to a nonresident exceeds US\$100,000:

- a loan for a term exceeding 180 days;
- making a security deposit (for currency control purposes, security deposits are considered loans);
- payment for exclusive intellectual property rights and transfers of money and other property to perform obligations under a joint venture agreement; and
- direct investments, i.e., an acquisition of 10% or more of the shares or participatory interest of legal entities.

6.2.2 Nonresident Legal Entities

For foreign currency purposes, nonresidents include foreign legal entities, their branches and representative offices, as well as all other entities that do not fall under the definition of “residents.” Foreign exchange regulations are substantially less restrictive for these entities, and, among other things, nonresidents may make payments to their employees in foreign currency (see Section 7.13 below).

6.2.3 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 US\$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

Customs Union, i.e., within the territories of Kazakhstan, Russia, Kyrgyzstan and Belarus. In other words, residents and nonresidents may import cash from one Customs Union country into another Customs Union country without any limitation and without submitting a customs declaration.

7. Employment

7.1 Introduction

Employment of nationals and foreign citizens in Kazakhstan is regulated by the *Labor Code*.²⁴

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.

7.2 Freedom to Employ

Generally speaking, foreign and domestic companies may hire employees directly, without the use of employment agencies. However, the *Law on Employment*²⁵ 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.

7.3 Employer's Obligations

An employer must comply with a number of obligations toward its employees, including the provision of a workplace that complies with

²⁴ The Labor Code of the Republic of Kazakhstan, Law № 414-V ЗPK dated 23 November 2016, as amended.

²⁵ The Law on Employment of the Population, dated 23 January 2001, as amended.

the regulations. In addition, an employer must insure its employees against work-related accidents.

7.4 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 or it is necessary to replace temporarily absent employees or the employee is hired for a particular project). A fixed-term employment agreement may be extended two times, each for a fixed term of not less than one year. Further extension will make the employment indefinite-term.

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.

7.5 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 in his or her 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: 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 liquidation of the employer or staff redundancy an employer must pay 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.

7.6 Minimum Wage and Salary

Generally, a salary amount is negotiated by an employer and employee. However, a salary cannot be lower than the minimum monthly salary set by the authorities on an annual basis. The minimal monthly salary for 2016 is KZT22 859 (approximately US\$70).

7.7 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 percent of the regular wage.

7.8 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 handicapped.

7.9 Sick Leave

Employees are compensated for temporary illness/disability up to 15 MCI (approximately US\$110) per month as sick leave compensation, to be paid by the employer.

7.10 Maternity and Childcare Leave

Maternity leave for up to 126 (or in some cases, 140) days is paid by the State Fund of Social Insurance, 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.

7.11 Cost of Employment

Employers are required to pay social tax and social security contributions as described in Section 5.8 above.

7.12 Withholding Obligations

Employers are obliged to withhold individual income tax and pension fund contributions for their employees (see Section 5.8 above).

7.13 Payment in Foreign Currency

A representative office or a branch of a foreign legal entity can pay salaries in a foreign currency either in cash or through a foreign currency account opened at a Kazakhstani bank. On the other hand, Kazakhstani entities can pay only their foreign employees in foreign currency. They must pay their local employees in local currency.

7.14 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.

7.15 Foreign Workers in Kazakhstan

7.15.1 Policy

The use of foreign labor in Kazakhstan is regulated by the *Law on Employment* and the *Rules on Hiring Foreign Workers*.²⁶ These laws are intended to maximize the employment of Kazakhstani citizens.

7.15.2 Work Permits

As a general rule, 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 enter into an employment agreement with a foreign employee only after obtaining a work permit.

A permit is not required for the following: 1) the heads of representative offices or branches of foreign legal entities; 2) employees who are on business trips in Kazakhstan for a term not exceeding 120 days during one calendar year; 3) heads of companies that have entered into contracts with the government of Kazakhstan for a sum of over US\$50 million or investment contracts in priority areas; 4) Russian, Belarusian and Armenian citizens; 5) certain others.

²⁶ Rules approved by a resolution of the Government of the Republic of Kazakhstan dated 13 January 2012.

In these cases an employer only has to submit a notification in an approved format to the local authorities about the employees that do not require a work permit.

If (i) a foreign entity sends personnel for more than 120 days to work for a counterparty based in Kazakhstan, and (ii) the foreign entity does not have a legal presence in Kazakhstan, then 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; and
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 issued for up to three years (except for employers that are classed as small enterprises, in which case the work permit is issued for one year).

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

- (i) Submit information on a vacancy to the local unemployment database no later than 15 calendar days before filing an application for a permit.
- (ii) Conduct interviews with Kazakhstani citizens whom the labor authorities send to the employer in connection with the vacancy.
- (iii) Provide the local authorities with copies of diplomas of the foreign personnel and a justification of why a Kazakhstani

citizen was not employed in the position, among other documents.

- (iv) The local authorities review the documents within 15 business days and take a decision on whether to issue the work permit. The local authorities should notify the employer of their decision within three business days.
- (v) Submit documents that guarantee the departure of the foreign employee to his/her country of residence upon expiry of the work permit (i.e., a copy of a deposit agreement with a local bank for the cost of a return air ticket) within 20 business days.

The local authorities can include certain conditions in work permits. For example, a work permit may require an employer to train its Kazakhstani employees to replace the foreign employees with local employees and/or create additional jobs for Kazakhstani citizens. Failure to fulfill these conditions could lead to the government refusing to extend a previously-issued work permit.

The process of issuing work permits takes between one and two months on average.

7.15.3 Foreign Labor Quotas Requirements

Under the *Law on Employment* and other labor legislation, the number of work permits available for foreigners is subject to a quota, first introduced in August 2000. The quota for 2016 has not been set yet.

8. Property Rights

8.1 Introduction

The *Land Code*²⁷ permits private ownership of land and is relatively favorable to foreign investors, permitting foreign individuals and foreign legal entities to acquire certain interests in land.

8.2 Limitations on Land Ownership

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

Essentially only Kazakhstani citizens and local legal entities²⁸ may privately own plots of farmland. However, foreign legal entities and foreign citizens can own land designated for industrial and residential use, and can lease all other categories of land.

The *Land Code* prohibits 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 either be permanent,²⁹ or temporary,³⁰ 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

²⁷ The *Land Code of the Republic of Kazakhstan*, dated 20 June 2003.

²⁸ Local legal entities with foreign ownership exceeding 50 percent cannot own farmland.

²⁹ Only state legal entities of the Republic of Kazakhstan can hold land under the right of permanent use.

³⁰ 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 consent of the state. However, a land use holder may “buy out” its land use rights from the state and 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 on the basis of a land use agreement (usually on a quarterly basis). Normally rent is determined on the basis of rates established by the state registry, which depend on the land’s category and value.

8.3 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.³¹ 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. But 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 time period specified in the law triggers administrative sanctions.

³¹ The law *On State Registration of Rights to Immovable Property and Transactions with Them*, dated 26 July 2007, as amended.

8.4 Buildings and Apartments

Foreign companies can own nonresidential and residential buildings and apartments. Under local law³² 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.

9. Language Policy

9.1 General

Under the Constitution and the *Law on Languages*³³ the state language is Kazakh. This is the official language of administration, legislation, court proceedings and recordkeeping. 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.

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

³² The law *On the Legal Status of Foreigners*, dated 19 June 1995, as amended.

³³ The law *On Languages in the Republic of Kazakhstan*, dated 11 July 1997, as amended.

9.2 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, name of the applicable standard, etc.) in both Kazakh and Russian are prohibited.

10. 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*³⁴ is the foundation of civil legislation in Kazakhstan. The *Civil Code* (which consists of both a General Part and a Special Part) is the systemized and codified law that is used as the legal basis for regulating all property-related and personal non-property-related relationships between citizens, legal entities and the state.

The General Part of the *Civil Code* sets out the basis for the regulation of corporate 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*, foreign investors enjoy the same rights and obligations as citizens and legal entities of Kazakhstan, unless otherwise provided by legislative acts.

³⁴ 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.

The Special Part of the *Civil Code* contains provisions governing certain types of contracts; defining contractual relations for particular types of agreements such as agreements for sale and purchase, leases, loans, commission agreements, agency agreements, insurance agreements, intellectual property rights agreements, inheritance as well as agreements on transportation and storage, etc. In addition, the Special Part regulates non-contractual damages and sets out conflict-of-laws rules.

In addition to the *Civil Code*, Kazakhstan has specific laws regulating different types of civil-law relations (e.g., the *Financial Lease Law*,³⁵ the *Franchising Law*³⁶ and the *Bankruptcy Law*³⁷). However, in the event of any discrepancies between such laws and the *Civil Code*, the latter will prevail except for regulations in the areas of employment, family relations, use of natural resources and the environment.

With certain limited exceptions, the *Civil Code* permits a contract between a Kazakhstani company and its foreign counterparty to be governed by foreign law. However the law has been commonly interpreted such that contracts between two Kazakhstani companies must be governed by Kazakhstani law.

11. Banking and Insurance

11.1 Description of the Banking System

The banking industry in Kazakhstan is regulated by the *Law on Banks and Banking Activities*,³⁸ and the *Law on the National Bank*,³⁹ among other laws.

³⁵ The law *On Finance Lease*, dated 5 July 2000, as amended.

³⁶ The law *On Complex Business Licenses (Franchises)*, dated 24 June 2002, as amended.

³⁷ The law *On Rehabilitation and Bankruptcy*, dated 7 March 2014, as amended.

³⁸ The law *On Banks and Banking Activities in the Republic of Kazakhstan*, dated 31 August 1995, as amended.

Kazakhstan has a two-tier banking system. The National Bank of Kazakhstan (“NBK”) 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 NBK is the central bank of Kazakhstan. It is an independent legal entity with a charter capital of not less than KZT20 billion, and it reports to the President of the Republic of Kazakhstan. The President appoints the Chairman of the NBK with the consent of the Senate (upper chamber of Parliament) and the Deputy Chairmen upon the recommendation of the Chairman. The President approves the NBK’s annual reports and has the right to demand any information relating to its activity.

The principal task of the NBK is to control inflation. The NBK 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.

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

There are 35 second-tier banks registered in Kazakhstan including one state-owned bank, the Housing Construction Savings Bank of Kazakhstan,⁴⁰ one Islamic bank (Al-Hilal) and 16 banks that are wholly owned and/or controlled by nonresidents (e.g. Citibank

³⁹ The law *On the National Bank of the Republic of Kazakhstan*, dated 30 March 1995, as amended.

⁴⁰ There is also a state-owned Development Bank of Kazakhstan which has special legal status and technically is not considered a second-tier bank.

Kazakhstan). As of 1 December 2015 the regulated capital of all commercial second-tier banks was KZT2990.5 billion.

11.2 Licensing

All banking activities, including the acceptance of deposits, maintenance of correspondent accounts, cash operations, money transfers, discounting operations, and loans are subject to licensing by the NBK.

11.3 Standards for Banks

The NBK establishes requirements for banks, including minimum capital requirements, capital adequacy requirements, and supervises them. Currently, the minimum amount of share capital for newly-established banks is KZT5 billion, and the minimum amount of regulatory (own) capital of a bank is KZT30 billion, and from 1 January 2019 it will be KZT 100 billion.

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

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

11.4 Shareholding in Banks

Any acquisition of 10 percent of the voting shares in a Kazakhstani bank requires prior approval by the NBK. Foreign shareholders holding 10 percent 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 any shares in Kazakhstani banks. Shareholders of a financially weak bank who have 10 percent or more of the voting shares may be required by

the NBK to take certain actions to improve the bank’s financial position. Shareholders with 25 percent or more of the voting shares are obligated to recapitalize the bank if there is a capital shortfall.

11.5 Deposit Guarantee System

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

11.6 Liquidation and Reorganization of Banks

Banks may be reorganized or liquidated by a court order or a bank’s voluntary decision. However, voluntarily reorganization or liquidation requires the NBK’s permission. According to legislation, banks can restructure their liabilities with the permission of the NBK and under court supervision. As a result three Kazakhstani banks (BTA Bank, Alliance Bank and Temir Bank) have been successfully restructured in recent years.

11.7 Non-banking Activity of Banks

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

11.8 Insurance

The main statute regulating the insurance industry in Kazakhstan is the *Insurance Law*.⁴¹

⁴¹ The law *On Insurance Activities*, dated 18 December 2000, as amended.

The property interests of a legal entity in Kazakhstan and interests of a Kazakhstani resident individual can only be insured by a licensed resident insurer. The NBK 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. The law restricts local insurers from reinsuring all of their risks abroad by providing that the aggregate amount of insurance premiums that resident insurers can pay to nonresident reinsurers may not exceed 25 percent of the aggregate amount of insurance premiums received by that insurer in a given period.

Nonresident insurance (reinsurance) companies may open representative offices without the NBK's approval (although these representative offices cannot carry out any business activity in Kazakhstan). However, they must notify the NBK about opening the office. From 16 December 2020 nonresident insurance (reinsurance) companies will be allowed to establish branch offices in Kazakhstan upon compliance with certain conditions and obtaining NBK 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 NBK but the activity of insurance agents is not. Special conditions and rules are established for resident and nonresident individuals and legal entities holding 10 percent or more of the voting shares of a local insurance company.

12. Intellectual Property

12.1 Introduction

In 1992-93 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 and appellations of origin of goods), copyright and related rights, selection achievements and topologies of integrated circuits. Legislation on intellectual property includes the *Copyright Law*,⁴² the *Trademark Law*,⁴³ the *Patent Law*,⁴⁴ *Law on the Protection of the Topologies of Integrated Circuits*,⁴⁵ and the *Law on Selection Achievements*.⁴⁶

12.2 State Authority for Intellectual Property Rights

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

12.3 International Conventions

Since 1993 Kazakhstan has been a party to the *Convention Establishing the World Intellectual Property Organization*; the *Paris Convention for the Protection of Industrial Property*; the *Madrid Agreement Concerning the International Registration of Trademarks*;

⁴² The law *On Copyrights and Related Rights*, dated 10 June 1996, as amended.

⁴³ The law *On Trademarks, Service Marks and Appellations of the Origin of Goods*, dated 26 July 1999, as amended.

⁴⁴ The *Patent Law*, dated 16 July 1999, as amended.

⁴⁵ The law *On the Legal Protection of the Topologies of Integrated Circuits*, dated 29 June 2001, as amended.

⁴⁶ The law *On the Protection of Selection Achievements*, dated 13 July 1999, as amended.

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 of Copyright Protection*; 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 Purpose of the Registration of Marks*, the *Locarno Agreement Establishing an International Classification for Industrial Designs*, and the *Budapest Treaty on the International Recognition of 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 (WPPT)* and the *WIPO Copyright Treaty (WCT)*. On 27 May 2010 Kazakhstan ratified the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Trademarks*. On 30 June 2011 Kazakhstan ratified the *Agreement on Unified Regulating Principles in the Sphere of Intellectual Property Protection*. On 2 May 2011 Kazakhstan ratified the *Patent Law Treaty*. In December 2015 Kazakhstan officially became a member of the World Trade Organization 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).

12.4 Registration

Kazakhstan is a “first to file” 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).

12.5 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 15 years of patent protection if it is new and original. The patent can be extended for five 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 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 Ministry of Justice to be valid.

Infringement of patents entails civil, criminal and administrative sanctions.

12.6 Trademarks, Service Marks and Appellations of the Origin of Goods

12.6.1 Introduction

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

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

Violation of trademarks and appellation of origin rights entails civil, criminal and administrative punishment.

12.7 Copyrights and Related Rights

The *Copyright Law* protects works of science, literature and art (copyrights), as well as performances, phonograms, and TV 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 his or her copyrighted work. Copyright applies during an author's lifetime plus 70 years.

12.8 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.

12.9 Protection of Intellectual Property Rights

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

13. Antimonopoly Regulation

13.1 General

As a result of recent administrative reforms, two separate state bodies responsible for the oversight of competition matters in Kazakhstan, namely the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies and the Agency of the Republic of Kazakhstan for Protection of Competition, were liquidated and their functions were transferred to the new Committee on Regulation of Natural Monopolies and Protection of Competition within the Ministry of the National Economy (the “Committee”).

The 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:

- transportation of oil, oil derivatives via trunk pipelines;
- storage and transportation of natural gas via trunk and/or distribution pipelines, operation of natural gas pipelines, use of natural gas distribution systems;
- transportation and/or distribution of electrical energy;
- generation, transportation, distribution and/or supply of heat energy;
- provision of electricity distribution services;
- services relating to balancing the generation and consumption of electrical energy;
- operation of mainline railways;

- provision of railway services under concession agreements;
- operation of branch railway lines;
- air navigation, airport and harbor services;
- provision of telecommunication services, if there is no other competing telecom operator due to technical impossibility or economical unfeasibility, except for universal telecommunication services;
- leasing duct banks and equipment for connecting telecommunication lines to the terrestrial telecommunication network (of the incumbent telecom operator);
- operation of water and sewage systems; and
- operation of publicly-available postal services.

The Committee maintains the register of “natural monopolies” and approves natural monopolists’ tariffs. Certain asset and share acquisitions involving natural monopolies require written approval of the Committee.

The Committee also regulates the competitive behavior of entities that are not natural monopolists. Under the *Commercial Code*,⁴⁷ a legal entity may be treated as holding a dominant position if its market share equals or exceeds 35 percent 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%-50% market share a dominant entity. Such factors include market powers which enable the entity to fix the prices of goods in the relevant market at its own discretion and generally to determine, for an extended period of time,

⁴⁷ This code came into force from 1 January 2016 and replaced the law *On Competition*, dated 25 December 2008.

the conditions for marketing its goods and to set barriers preventing its competitors from entering the market.

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

Since 1 January 2016 only those dominant entities which operate in regulated markets (please see the list of industries considered “natural monopolies” above) are entered into the register of entities having a dominant or monopolistic position in the market. Such entities are required to submit reports on their operations and to obtain approval of their pricing policies.

The Committee is responsible for enforcing merger control regulations, and the following transactions are subject to its oversight:

- (i) reorganization of a company by way of merger or absorption;
- (ii) acquisition by a person, company or group of more than 50 percent of the voting shares in a company in which the acquirer previously had no shares or had less than 50 percent of the voting shares;
- (iii) acquisition of the main production assets and/or intangible assets of a company if the total balance sheet value of the transferred assets exceeds 10 percent 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; and
- (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 prior written approval of the Committee is required. For other transactions (listed in Paragraphs (iv) and (v) above) the Committee only needs to be notified.

All of the transactions listed above require the Committee's pre-approval if one of the following conditions is met:

- the total value of the worldwide assets or the annual turnover of the companies involved is above 10,000,000 times the MCI (approximately US\$55,8 million); or
- one of the parties has a dominant or a monopolistic position in the Kazakhstani market.

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

The *Commercial 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 *Commercial 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.⁴⁸

13.2 Protection from Unfair Competition

Under the Commercial Code, the following activities constitute unfair competition:

- use of trademarks or packaging without authorization;

⁴⁸ For example, the merger of two foreign companies, conducted outside Kazakhstan, which requires the approval of the Kazakhstani competition authority, could be held invalid in Kazakhstan if that approval was not granted.

- use of the goods of another manufacturer without authorization;
- copying an article's appearance;
- discrediting a competitor;
- advertising flagrantly false, improper or unreliable information;
- demanding the sale of goods in compulsory combination;
- a call to boycott a seller (supplier);
- a call to discriminate against a buyer (supplier);
- a call to break a contract with a competitor;
- bribing a seller's (supplier's) employee;
- bribing a buyer's employee; and
- use of trade secrets without authorization.

13.3 Liability for Violating Antimonopoly Legislation

Violations of antimonopoly legislation (including acts of unfair competition, a failure to obtain approval of a merger when required, a failure to obey the orders of the competition authorities, 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 percent of the income received from the illegal activity in addition to potential confiscation of all such income.

Fines may be reduced in certain circumstances, such as when an offender has informed the Committee of the offense itself and cooperated with any investigations.

14. Product Liability

14.1 Product Liability

The *Civil Code* and the *Consumer Protection Law*⁴⁹ govern product liability.

The law obliges sellers and manufacturers to ensure that the products they manufacture and sell are of the required quality, 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 defects and 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 features necessary for the consumer, the consumer has the right to terminate the contract and claim compensation; (ii) impossibility to use the purchased product according to its intended purpose, a 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, a consumer is entitled to terminate the contract and claim compensation of losses); and (iii) damage to a consumer's life, health or property, the consumer will be entitled to claim compensation.

A consumer has the right to require the replacement of a purchased product with a similar product within 14 days of the purchase - no

⁴⁹ The law *On the Protection of Consumer Rights*, dated 4 May 2010, as amended.

questions asked. If a similar product is not available the consumer may demand a refund.

14.2 Certification

Certain types of products which are manufactured in or imported into Kazakhstan must comply with the Eurasian Economic Union'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 subsequent issuance of certificates of conformity can be performed in any country of the Eurasian Economic Union and such certificates are recognized by the other countries of the union. Kazakhstan can also recognize certificates of conformity issued in foreign countries on the basis of the relevant international agreements with such countries.

15. Regulation of Industry

15.1 Oil and Gas

15.1.1 Introduction

Subsoil resources such as oil and gas are the exclusive property of the state. However, rights to use the subsoil may be granted to local and foreign individuals and legal entities on the basis of a subsoil use contract concluded with the Ministry of Energy (for the oil and gas, coal and uranium sectors) or the Ministry of Investments and Development (for the mining industry) following an investment tender.

15.1.2 Oil and Gas Legislation

The primary legislative act regulating the oil and gas industry in Kazakhstan is the *Subsoil Law*.⁵⁰ However, a number of other legislative acts regulate specific aspects of subsoil use.

The *Subsoil Law* 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 into the old *Subsoil Law*⁵¹ and the *Oil Law*⁵² in 1999, 2004, 2007, 2008 and 2010. 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 direct or indirect transfer of a subsoil use right or shares in a subsoil user. The procedure for the state's preemptive right has been regulated in more detail in the new *Subsoil Law*. Failure to comply with this preemptive right could result in the termination of the subsoil use contract and/or invalidation of the relevant transaction.

⁵⁰ The law *On Subsoil and Subsoil Use* dated 24 June 2010, as amended.

⁵¹ The law *On Subsoil and Subsoil Use* dated 27 January 1996 was cancelled in connection with the adoption of the new *Subsoil Law* in 2010.

⁵² The law *On Oil* dated 28 June 1995 was cancelled in connection with adoption of the new *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 the Republic 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 can, at the government's initiative, 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. It should be noted, however, that these 2007 provisions apply only to so-called "significant and strategic" deposits of natural resources. The current list of "strategic" fields was adopted in 2011 and includes 362 deposits of oil, gas, condensate, coal, and metals, including all of the major oil and gas fields.

Under the 2008 amendments, production sharing agreements were eliminated from the list of contracts that could be executed with the state. To date only exploration and/or production arrangements have been allowed (for further details, please refer to Section 15.1.3 below). However, production sharing agreements 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 Subsoil Law 1) eliminated combined exploration and production contracts (except for a limited number of exceptions), 2) provided more detailed procedures for seeking and obtaining waivers of preemptive rights and approval for transfers of subsoil use assets, and 3) 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 can be granted in a simplified procedure without holding a competitive tender.

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

The *Gas Law* was adopted in 2012.⁵³ The *Gas Law* introduced 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*,⁵⁴ which regulates matters related to construction, exploitation, services and other main oil and gas pipeline issues.

15.1.3 Contracts

The government annually approves a list of subsoil blocks to be put out to tender. Organizations wishing to participate in a tender must submit an application to the Ministry of Oil and Gas or the Ministry of Industry and New Technologies.

The *Subsoil Law* allows the following types of contracts:

- exploration contracts;
- standard exploration contracts (to be granted under a simplified procedure);
- production contracts;
- combined exploration and production contracts;
- contracts for construction and/or exploitation of underground facilities not connected with exploration or production; and

⁵³ The law *On Gas and Gas Supply*, dated 9 January 2012.

⁵⁴ The law *On Main Pipelines*, dated 22 June 2012.

- contracts for state geological research of subsoil.

Exploration contracts are concluded for six years. For offshore oil deposits, this term may be extended for a two-year period if the contractor applies for an extension no later than six months before the contract expires.

In the event natural resources are discovered, a contract may be extended for the amount of time needed to assess their commercial value.

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 if the contractor applies for an extension no later than six months before the contract expires, provided that there have been no breaches of the contract.

The specific terms of a contract can be determined by the parties in accordance with applicable laws. Every subsoil use contract must reflect the conditions listed in the *Subsoil Law*. In addition, subsoil use contracts should reflect the provisions of the *Model Subsoil Use Contract*,⁵⁵ although this is simply a framework that can be modified to meet a transaction's specific requirements.

Before a contract is signed, it must undergo legal expert examination. Contracts for production are also subject to economic expert examination. The contract must also be registered with the Ministry of Energy or the Ministry of Investments and Development. It becomes effective from the date of registration.

⁵⁵ Order of the Minister of Energy dated 31 March 2015 *On the Approval of Model Contracts for Exploration, Production, Combined Exploration and Production of Hydrocarbons, Uranium and Coal*.

15.1.4 Local Content Requirement

The law requires all oil and gas companies operating in Kazakhstan under licenses and/or contracts to organize tenders for most goods, works and services that they procure in Kazakhstan, and to give preference to local goods, work and services. Usually the local content requirements for personnel, goods, works and services (expressed in specific percentages/ratios) must be spelled out in a subsoil contract. However, in view of Kazakhstan's joining the World Trade Organization, it is envisaged that subsoil use contracts executed after 1 January 2015 should not contain any obligations of 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%. Also, it is established that discounts which subsoil users should grant to local manufacturers of goods will be removed after expiry of the relevant subsoil use contracts or 1 January 2021, whichever occurs earlier (although discounts to be granted to the providers of works and services should remain).

The new Rules for Purchasing Goods, Works and Services when Carrying Out Subsoil Use Operations approved by the Joint Order of the Minister of Investments and Development dated 27 February 2015 and Minister of Energy dated 27 March 2015 replaced previous rules. These rules contain more detailed regulations for buying goods, works and services, aimed at supporting local manufacturers.

15.1.5 Exports of Oil and Gas

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

In general, in order 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 (CPC) 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 3000 kilometers long and is expected to initially pump up to 10 million tons of oil per year (with potential 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 (BTC) pipeline. On 24 January 2007, state-owned oil and gas company KazMunaiGaz JSC signed a memorandum of understanding on the establishment of the Kazakhstan Caspian oil transportation system, which will export oil from the Kashagan and Tengiz fields across the Caspian Sea to Europe via the route Eskene-Kuryk-Baku-Tbilisi-Ceyhan. Further, on 14 November 2008, KazMunaiGaz JSC and the Azerbaijan State Oil Company signed the Agreement on the Main Principles of Implementation of the Trans-Caspian Project. On 2 October 2009 the Agreement on Cooperation in Preparing a Feasibility Study for the Trans-Caspian Project was signed. Initially the pipeline system is expected to transport 25 million tons of oil annually which will eventually be increased to 38 million tons. The commissioning of the project into operation is associated with oil production at the Kashagan oil field which, after a number of delays, is expected to take off in 2016.

15.2 Power

Until the President of Kazakhstan initiated reforms in 1995, the Kazakhstani power sector was exclusively state-owned. It operated through integrated utility companies responsible for generation, transmission and distribution, and was administered accordingly.

As a result of numerous post 1995 reforms and restructurings, currently the local power sector is structured according to major business activities: generation, transmission, distribution, and supply of electricity.

The main players in the power sector are:

- Power generating organizations (“**PGOs**”) (producers or importers of power);
- Power supply organizations (“**PSOs**”) (distribution and supply companies); and
- Power transferring organizations (“**PTOs**”) (transmission companies).

15.2.1 Generation

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

Hydroelectric power plants (“**HPPs**”) are the second largest electricity producers in Kazakhstan. Two of the three biggest HPPs located in the Eastern-Kazakhstan Region are operated by a US power company under a long-term concession agreement with the Government of Kazakhstan.

There are also a number of combined heat & power plants (CHPs).

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

Finally, 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.

It is to be noted that the power sector in Kazakhstan is still subject to special tariff regulations. At present there are different types of tariffs that apply to PGOs (e.g., "maximum tariffs", "individual tariffs", and "calculated tariffs").

15.2.2 Transmission

Transmission of electricity via electricity networks has been unbundled from the generation, distribution and supply of electricity. At the moment, transmission is generally carried out by the state-owned operator of the national grid (JSC KEGOC) and regional operators of regional grids (the so-called Regional Electricity Companies or RECs). KEGOC is also responsible for centralized dispatch management. The transmission of power 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 and Regulated Markets*.

15.2.3 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 today, there are 195 companies which 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.

Under the 2015 amendments to the law *On Electricity* the export and import of electricity should be done only via the state-owned company Samruk-Energo JSC.

15.2.4 Tariff Regulation for PGOs

Under the recent amendments to the *Law on Electricity*, generators must commit to improve and develop power industry assets in line with the “*tariffs in exchange for investments*” policy set forth in this law.

Under this policy, PGO tariffs are usually capped at the “maximum tariffs” set by the Government. With limited exceptions the “maximum tariffs” apply to all power generating companies. The maximum tariff varies depending on the specific group to which a particular power generating company belongs. Power generating companies are notionally allocated into a number of groups on the basis of such criteria as the type of power generating company, capacity, type of fuel and distance from fuel sources. Currently, all power generating companies are divided into 13 groups and their tariffs range from 4.5 tenge per 1 kWt to 11.62 tenge per 1 kWt for this year.

In addition, to be entitled to the use the “maximum tariffs” PGOs are required to execute investment agreements with the Ministry of Energy whereby PGOs are often obligated to use all of their income to renovate or develop their production facilities.

If the maximum tariff set by the government does not provide a PGO with sufficient profitability, the said PGO may seek Government consent to temporarily use “individual” or “calculated tariffs” which are generally higher than the “maximum tariffs”. For that purpose the PGO must execute a special agreement with the Ministry of Energy and the local anti-monopoly authority.

Violations of tariff regulations can entail significant administrative liability.

The existing tariff regulation system has been strongly criticized and questioned by investors because it effectively prevents distribution of PGOs' income to their shareholders.

Recently it was decided that starting from 1 January 2016 the existing system will change and investments in developing production facilities will be compensated by the state-owned company KEGOC JSC via payments for ensuring “capacity services” (in Russian “услуги по обеспечению готовности электрической мощности к несению нагрузки”) within the framework of the maximum tariffs approved by the Ministry of Energy. The agreement with KEGOC may be executed either before or after the construction/renovation of a power plant. As of today, there are still a number of gaps in the legal framework of the proposed system which will hopefully be clarified later this year.

15.2.5 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 hydroelectric power plants with a capacity of less than 35 MWt).

Specifically, according to the Law of the Republic of Kazakhstan *On Supporting the Use of Renewable Energy Sources* dated 4 July 2009 (the “Renewable Energy Law”), the Kazakhstani Government guarantees that the power produced by renewable power plants will be bought by Accounting and Finance Center LLP (“AFC”), a fully state-owned company, based on specially approved fixed tariffs under 15-year power supply arrangements.

The fixed tariffs were approved by the Kazakhstani Government 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.

To be entitled to execute an agreement with the AFC to sell power at prices fixed by the Government, the renewable power plant must be registered as such with the Ministry of Energy.

Power plants can be included in this list only after the ministry 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 statutory documents of the company which owns the power plant should be attached to the application, a 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 adopted only very recently, currently there are a number of on-going renewable energy projects in Kazakhstan (mostly solar and wind).

15.3 Telecommunications

The primary statutes regulating the field of telecommunications are the *Communications Law*,⁵⁶ *Licensing Law*⁵⁷ and *National Security Law*.⁵⁸

The National Security Law provides restrictions on foreign ownership:

- foreign individuals and foreign legal entities are prohibited from owning (directly or indirectly) more than 49 percent of long distance and/or international telecommunications service

⁵⁶ The law *On Communications*, dated 5 July 2004, as amended.

⁵⁷ The law *On Permissions and Notifications*, dated 16 May 2014, as amended

⁵⁸ The law *On National Security*, dated 6 January 2012, as amended

providers that, in turn, own terrestrial telecommunication lines (cable buses, optical cable and radio-relay networks);

- foreign individuals and foreign legal entities are prohibited from owning (directly or indirectly) more than 20 percent of television or radio broadcasting companies; and
- foreign individuals and foreign legal entities are prohibited from managing and/or operating any trunk lines in Kazakhstan.

Telecommunication services are subject to mandatory licensing. The licenses are issued by the Communication, Informatization and Information Committee of the Ministry of Investment and Development (the “Communications Committee”). Kazakhstan’s Interdepartmental Commission for Radio Frequencies is a local state telecommunication authority responsible for allocating the frequency spectrum.

The Communications 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 Communication Law frequencies may be allocated on the basis of a tender. However, the Communications Committee is authorized to allocate frequencies by itself. The Tax Code and the Communications Law provide that one-off payments for the use of radio frequencies are payable when frequencies are allocated on the basis of a tender. Frequencies for TV and radio broadcasting can be allocated only on the basis of a tender.

15.4 Construction

Construction activities are heavily regulated in Kazakhstan and require various permits and approvals. The primary legislative act regulating construction is the *Law on Construction*.⁵⁹

Most stages of construction are subject to coordination with and approval by governmental authorities. These stages are:

- (i) obtaining a land plot or permit for construction on a land plot;
- (ii) obtaining technical conditions for use of public utilities;
- (iii) approval and state expert examination of construction designs;
- (iv) obtaining a construction permit;
- (v) supervision by the state during the construction process; and
- (vi) approval and state registration of the completed construction.

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

Most types of construction activities require licenses in Kazakhstan. *The Law on Permits and Notifications*⁶⁰ provides a detailed list of construction activities subject to licensing. These activities range from drafting architectural plans to installing, building and repairing structures.

⁵⁹ The law *On Architectural, Town Planning and Construction Activity in the Republic of Kazakhstan*, dated 16 July 2001, as amended.

⁶⁰ The law *On Permits and Notifications* dated 16 May 2014, as amended.

To obtain a license, a company must comply with the requirements set in the *List of Qualification Requirements*.⁶¹ After the license is issued, governmental authorities verify the compliance of the license holder in state inspections. Licenses are obtained from the Construction Committee of the Ministry of the National Economy.⁶² 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.

15.5 Maritime Industry

Although Kazakhstan is considered a landlocked country it has a comprehensive legal framework for its maritime industry. This is due to the fact that Kazakhstan is one of the five littoral countries of the Caspian Sea.

The maritime industry in Kazakhstan is primarily governed by the *Shipping Law*.⁶³ The *Shipping Law* sets out certain requirements for any foreign shipping company intending to perform maritime transportation services in Kazakhstan. Firstly, a foreign company must (with very limited exceptions) create a legal presence in Kazakhstan. This requirement can be satisfied only by establishment of a local subsidiary. Registration of a local branch or representative office is not sufficient.

Secondly, 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 or “temporarily” if ownership of a vessel is

⁶¹ *Unified Qualification Requirements for Activities in the Field of Architecture, Urban Construction and Construction* approved by the decree of the acting Minister of the National Economy of the Republic of Kazakhstan dated 9 December 2014.

⁶² *Regulations on the Committee for Construction Matters, Housing Maintenance and Utilities and Land Resources Management of the Ministry of the National Economy* approved by the decree of the Minister of the National Economy of the Republic of Kazakhstan dated 29 September 2014, as amended.

⁶³ The law *On Commercial Shipping*, dated 17 January 2002, as amended.

retained by a foreign company and the vessel is chartered by a local company on a bareboat basis.

Finally, a shipping company is obliged to obtain all the necessary government licenses and permits, including a transportation license.

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 and certificate of seaworthiness). Technical examination and classification of a vessel must be carried out by a classification society approved by the government of Kazakhstan.

15.6 Pharmaceuticals

15.6.1 General

The primary law regulating the pharmaceuticals industry is the Kazakhstani code “*On the Health of the Population and System of Health Care,*” adopted 18 September 2009, as amended (the “*Health Code*”).⁶⁴

The regulatory body governing the health care system and pharmaceutical market is the Ministry of Healthcare and Social Development (the “MOH”).

15.6.2 Registration of Medicines

Various medical items must be registered in Kazakhstan for manufacture, sale or use in Kazakhstan. These include medicines, medical equipment and other medical products.

⁶⁴ On 23 December 2014 the Agreement on Common Principles and Rules for the Treatment of Medicinal Preparations within the EEU (the “Agreement”) was signed. The Agreement provides for the establishment of a common market of medicinal preparations within the EEU and free flow of medicinal preparations starting from 1 January 2016. However, as of 1 January 2016, Russia has not yet ratified the Agreement. This means that the Agreement did not come into effect on 1 January 2016.

Certain items are exempt from the registration requirement, such as medicines prepared in local pharmacies and medicinal substances produced in accordance with international guidelines known in the industry as Good Manufacturing Practice.

Registration requires expert evaluation by the National Center for Expert Examination of Medicines, Medical Equipment and Medical Devices to ensure a product's compliance with Kazakhstani quality, safety and effectiveness standards.

All medicines registered in Kazakhstan (both imported medicines and medicines produced in Kazakhstan) and certain medical products are subject to quality and safety assessments by the National Center for Expert Examination of Medicines, Medical Equipment and Medical Devices.

15.6.3 Licensing

Certain pharmaceutical activities require a license from local executive bodies (e.g., the Department of Economic and Budget Planning of Almaty city Akimat). These activities include the manufacture of medicines, medical equipment and other medical products, retail and wholesale sale of medicines as well as import and export of certain medical products. On the other hand, some activities (including retail and wholesale of medical equipment and other medical products) simply have a notification requirement and do not require a license.⁶⁵

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

15.6.4 Promotion

Advertising or promotion of medicines is subject to certain restrictions specified in the Health Code and should be pre-approved.

⁶⁵ But the MOH must be notified before these activities can be started.

Specifically, companies are not allowed to advertise medicinal products without first having to submit the relevant advertising material to the National Center for Expert Examination of Medicines, Medical Devices and Medical Equipment for mandatory review and approval.⁶⁶

Further, the following are prohibited under the Health Code:

- (i) advertising medicines, healthcare products and medical devices, dietary supplements, and preventive means not registered in the Republic of Kazakhstan,
- (ii) distributing samples of prescription medicines for the purpose of advertising and promotion,
- (iii) engaging children for advertising medicines and medical products not intended for children,
- (iv) advertising medicines on public transport and in organizations not related to their intended purpose, use and delivery,
- (v) placing outdoor visual advertisements, such as billboards, display panels, event posters and other permanent items, and
- (vi) engaging health care professionals authorized to administer medicines for distribution purposes (certain exceptions apply).
- (vii) advertising without a license/permit.

Prescription medicines may only be advertised in specialized medical and pharmaceutical printed publications.

⁶⁶ This requirement was introduced by Law of Kazakhstan No. 299-V “On Changes and Amendments to Certain Legislative Acts of the Republic of Kazakhstan on Regulation of Healthcare” dated 6 April 2015. The relevant procedure is detailed in the rules on advertising medicines, medical devices and medical equipment dated 17 April 2015.

In addition, the Health Code provides for a ban for advertising and promotional material which:

- provides information about sexually-transmitted, oncological, mental, dangerous infective diseases, HIV/AIDS, tuberculosis, and diabetes;
- refers to a recommendation by scientists, healthcare professionals or government officials who, because of their special (celebrity) status, could encourage consumption or prescription of medicinal products;
- represents medicinal products or medical services as being unique, the safest and the most effective;
- suggests that the safety or efficiency of the medicinal product is due to the fact that it is natural; and
- guarantees the efficiency of medicinal products and the absence of adverse effects.

16. The Judicial System and Dispute Resolution

16.1 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 troubling 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: the formation of a Judicial Administration Committee under the Supreme Court, the establishment of judicial ethics commissions, increases in judicial salaries, the raising of minimum qualifications for judges and the formation of 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, in 2014-2015 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 make the court system more transparent and simple. The measures included introduction of (i) a detailed dispute settlement procedure; (ii) a simplified court procedure, which allows courts to resolve disputes without conducting formal court hearings; (iii) state duty for filing appeals against judgments of 1.5% of the claimed sum for each stage of review. The total number of court instances was also decreased from four to three together with some other measures described below.

16.2 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*,⁶⁷ the *Civil Procedural Code*⁶⁸ and the *Criminal Procedural Code*.⁶⁹

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

⁶⁷ The constitutional law *On the Judicial System and the Status of Judges in the Republic of Kazakhstan*, dated 25 December 2000.

⁶⁸ The *Civil Procedural Code* of the Republic of Kazakhstan, dated 31 October 2015.

⁶⁹ The *Criminal Procedural Code* of the Republic of Kazakhstan, dated 4 July 2014.

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. There is also the cassation collegium in regional courts, which was the court of cassation for appealing decisions issued by courts of appeal, but starting from 1 January 2016 this collegium has been eliminated.

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 Electoral Committee). There are several bodies in the Supreme Court including the Plenary Meeting of the Supreme Court as well as 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 inter-district courts that have the status of local city and district courts. These include: economic courts (which hear disputes where the parties are legal entities and/or sole proprietors), administrative courts (which hear disputes on challenging resolutions of state bodies levying administrative penalties), a financial court in Almaty (which has jurisdiction in civil cases concerning participants of the Regional Financial Center in Almaty), juvenile courts (which have jurisdiction in cases involving minors) and criminal courts (which have jurisdiction over criminal cases). Also, in 2015, investment collegia were established in Astana City Court and the Supreme Court for resolution of disputes involving investors;

In 2015 the constitutional law *On Astana International Financial Center (IFC)* was adopted.⁷⁰ This law provides, among other things,

⁷⁰ The constitutional law *On Astana International Financial Center*, dated 7 December 2015.

for institution of the IFC Court which would resolve (i) disputes between the center's participants (companies registered on IFC territory); (ii) disputes about transactions conducted in the IFC and on the basis of IFC law; and (iii) disputes referred to the IFC Court by the parties concerned.

The IFC Court will consider disputes on the basis of English procedural law. The judgments issued by this court will be directly enforceable in Kazakhstan.

16.3 Judges

District, specialized inter-district and regional court judges are appointed by the President based on a recommendation of the Supreme Judicial Council. Supreme Court judges are appointed by the Senate from among nominees the President has selected based on recommendations of the Supreme Judicial Council.⁷¹

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 Chairman (appointed by the President), Chairpersons of the Constitutional Council 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 chairpersons of district and regional courts and the Supreme Court, as well as the chairpersons of the collegiums of a region and the Supreme Court, are appointed for five-year terms.

⁷¹ The status, procedure for formation and organization of the activity of the Supreme Judicial Council and the Qualification Collegium of Justice are determined by the law *On the Supreme Judicial Council*, dated 17 November 2008.

The procedure for appointment of judges of the IFC Court will be determined by the IFC separately, however at this stage it is presumed that this procedure will be different from that existing in other Kazakhstani courts.

16.4 Alternative Dispute Resolution

16.4.1 Arbitration

Although Kazakhstan has been a party to the 1958 *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* since 1995, the ability of a foreign company 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 are generally reluctant to fully enforce an award in favor of a foreign party against the government of Kazakhstan 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 there are two main laws concerning arbitration: the *Arbitration Courts Law*⁷² and the *International Arbitration Law*.⁷³

The *Arbitration Courts Law* applies to disputes between residents of Kazakhstan and permits these disputes to be resolved by “arbitration courts” in Kazakhstan. (These “arbitration courts” are not state courts, but various private arbitration tribunals roughly analogous to private arbitration tribunals in Western countries.) This law regulates every stage of the arbitration proceedings and provides a mechanism for enforcing these awards in state courts. However, the *Arbitration Courts Law* prohibits arbitration of disputes involving state interests, state enterprises, natural monopolies, and entities with a dominant

⁷² The law *On Arbitration Courts*, dated 28 December 2004.

⁷³ The law *On International Arbitration*, dated 28 December 2004.

market position. It also prohibits arbitration for disputes arising out of non-pecuniary relations connected with an individual's life or health, the sanctity of personal and family secrets, and a person's right to their name. The *Arbitration Courts Law* also prohibits state bodies, state enterprises and natural monopolists from establishing arbitration courts.

The *International Arbitration Law* roughly mirrors the *UNCITRAL Model Law on International Commercial Arbitration* and applies to disputes where at least one party is not a resident of Kazakhstan. However, a wholly-owned Kazakhstani subsidiary of a foreign legal entity is considered a local resident. Thus, disputes between two Kazakhstani-registered subsidiaries of foreign companies cannot be resolved by international commercial arbitration in Kazakhstan. The *International Arbitration Law* applies also to disputes related to concession contracts.

The *International Arbitration Law* 1) regulates arbitration proceedings in Kazakhstan between covered parties, 2) contains procedures for setting aside arbitral awards issued in Kazakhstan, and 3) contains procedures for enforcing foreign arbitral awards in Kazakhstan. The grounds for setting aside arbitral awards issued in Kazakhstan and refusal to enforce foreign arbitral awards are very similar to and based on the relevant provisions of Article V of the 1958 *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. However, we should note that under a 2009 resolution by the Supreme Court (which is binding on local courts),⁷⁴ Kazakhstani courts can postpone enforcement of foreign and domestic arbitral awards.

Similar to the *Arbitration Courts Law* for domestic disputes, the *International Arbitration Law* prohibits arbitration for disputes arising

⁷⁴ Normative Resolution of the Supreme Court of the Republic of Kazakhstan *On Certain Issues Related to the Enforcement of Court Decisions in Civil Cases* dated 29 June 2009.

out of non-pecuniary relations connected with an individual's life or health, the sanctity of personal and family secrets, and a person's right to their name.

Also, certain disputes (including those concerning land and taxes) cannot be arbitrated since they are subject to the exclusive jurisdiction of Kazakhstani courts.

In Kazakhstan arbitration is not a very popular means of dispute resolution, but given the recent amendments to the *Civil Procedural* and *Tax Codes* (as described in clause 1.1. of this section), 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.

The draft *Arbitration Law* is currently being considered by the Kazakhstani legislature. This law is aimed at unification of rules applied to domestic and international arbitration and is expected to replace the current *Arbitration Courts Law* and *International Arbitration Law* in 2016.

16.4.2 Mediation and other Alternative Dispute Resolution Mechanisms

In 2011 Kazakhstan adopted a *Mediation Law*.⁷⁵ Under the *Mediation Law* 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. However, mediation cannot be used for disputes involving state organizations or incapacitated persons.

Under the *Mediation Law* 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

⁷⁵ The law *On Mediation*, dated 28 January 2011.

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 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 implies negotiations between parties and their counsels 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.

16.5 Recognition and/or Enforcement of Court Judgments

16.5.1 Enforcement of Domestic Court Judgments

Enforcement of domestic court judgments is handled by the MoJ's Committee on Enforcement of Court Acts. This activity is regulated by legislation including the law *On the Court Marshals Service*.⁷⁶ Under this law, court marshals (bailiffs) have expansive powers and can search for a debtor's assets and auction them off. Auction proceeds are then used to implement the judgment. However, the court marshals (bailiffs) are overloaded with work and working closely with

⁷⁶ The law *On Enforcement Proceedings and the Status of Court Marshals (Bailiffs)* dated 2 April 2010.

the court marshals' (bailiffs') office is crucial for facilitating expedient enforcement.

In order to increase the effectiveness of the enforcement of court judgments, the law *On the Court Marshals Service* has been amended. These amendments allow private court marshals to enforce court judgments. Private court marshals act under a special license from the Ministry of Justice and in general have the same powers and authorities as state court marshals, with several exceptions, including the right to conduct enforcement proceedings against the state and organizations 50% of which belongs to the state and its affiliates.

16.5.2 Recognition and Enforcement of Foreign Court Judgments

Kazakhstani courts will enforce a foreign court judgment only if there is a treaty to that effect between Kazakhstan and the relevant foreign country. While Kazakhstan has entered into several bilateral and multilateral treaties to facilitate recognition and enforcement of foreign court judgments,⁷⁷ none of those treaties are with Western European or North American countries. Except for a treaty with other CIS countries, Kazakhstan is not party to a multilateral treaty on the recognition and enforcement of foreign court judgments. Thus, as a general rule, Kazakhstani courts will not enforce most foreign court judgments.

Alternatively, Kazakhstani courts are allowed to recognize and enforce foreign court judgments on the basis of the reciprocity principle. However, we are not aware of any such practice of Kazakhstani courts.

⁷⁷ Treaties on enforcement of court judgments were concluded with, among others, certain CIS countries, North Korea, Lithuania, Pakistan, China, Mongolia and Turkey.

17. The Environment

17.1 Introduction

Environmental protection in Kazakhstan is regulated by the *Environmental Code*.⁷⁸ It is generally believed to be close to international standards of environmental regulation.

17.2 Regulatory Bodies

The Ministry of Energy of the Republic of Kazakhstan (“ME”) is the principal state authority for environmental protection. It issues environmental permits and licenses, and establishes limits for environmental emissions among other things.

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

17.3 General Environmental Requirements

Individuals and legal entities that affect the environment are subject to state oversight. The ME 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 any project that may harm the environment begins. Enterprises engaged in potentially environmentally-hazardous activities must obtain environmental insurance.

Violation of state environmental requirements entails civil, administrative and criminal liability for individuals and legal entities.

⁷⁸ Environmental Code of the Republic of Kazakhstan, Law No. 212-III dated 9 January 2007.

17.4 Environmental Authorizations

All individuals and legal entities that produce atmospheric discharges, sewage, solid consumption or industrial waste must obtain an environmental permit from the ME or its local subdivisions. Under the *Environmental Code* there are two types of environmental permits:

- (i) permits for environmental emissions; and
- (ii) complex environmental permits.

Emissions permits are more common. They are issued for the period until the relevant technologies used by a holder or the terms of use of natural resources change, but not more than ten years. Once an emissions permit expires it is necessary to reapply to the ME for its renewal.

On the other hand, a complex environmental permit can be issued for an indefinite term to environmental users who comply with the best-available environmental technologies. A complex environmental permit is valid until the technologies applied or environmental use conditions specified in the environmental permit change. The government approved a list of technologies eligible for complex permits on 28 November 2014.⁷⁹

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

- environmental design or standardization for certain types of activity; and
- environmental audit of certain types of activity.

⁷⁹ Approved by Order of the Minister of Energy No. 155 dated 28 November 2014.

The abovementioned licenses can be issued subject to compliance with certain requirements set out by legislation.⁸⁰

17.5 Climate Change

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

Kazakhstan has taken some steps to establish its own greenhouse gases emissions trading system by amending the *Environmental Code*.⁸¹ However, numerous issues still need to be resolved, specifically amending existing legislation governing allocation and trading in emission allowances and enforcement of other relevant rules.

18. Procurement

18.1 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 percent of the shares (or a 50% participatory interest) and their affiliates is subject to special regulation under the *State Procurement Law*.⁸² The *State Procurement Law* expressly excludes from its remit national management holding companies, national holding companies, national management companies, national

⁸⁰ *Qualification Requirements Applicable to Activity in the Area of Environmental Protection and List of Documents Confirming Compliance with Such Requirements* approved by Order of the Minister of Energy No. 6 dated 14 January 2015.

⁸¹ The amendments introduced by Law No. 505-IV *On Amending Legislative Acts on the Environment*, dated 3 December 2011.

⁸² The law *On State Procurement*, dated 4 December 2015, as amended.

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 the National Welfare Fund “Samruk-Kazyna”, procurement rules approved by the National Bank, etc.) However, such procurement rules are similar to the state procurement rules in most respects.

As a general rule, state procurement can only be carried out through a tender. Tenders are organized by a special commission formed by the purchaser. 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 Committee for Financial Control of the Ministry of Finance. Among other functions, this committee maintains a register of entities that must comply with state procurement rules.

18.2 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 in order to purchase the goods, works and services necessary for their operations. In certain cases (e.g., if the needed goods and services are produced by only one supplier), the Procurement Rules⁸³ allow purchases to be made without a tender.

⁸³ *Rules for Purchasing Goods, Works and Services when Carrying Out Subsoil Use Operations* approved by the Joint Order of the Minister of Investments and Development dated 27 February 2015 and Minister of Energy dated 27 March 2015; *Rules on Procurement of Goods, Works and Services in the Course of Subsoil Use Operations with Use of the State Information System “Register of Goods, Works and Services Used in Subsoil Use Operations and Their Manufacturers”* approved by the Order of the Minister of Investments and Development dated 30 January 2015.

The law usually obliges subsoil users to engage local companies that produce goods and services in Kazakhstan and have at least 95 percent local labor if their goods and services are comparable, in terms of price and quality, to goods and services provided by foreign companies. However, as discussed above, some of these preferences were removed in connection with Kazakhstan joining the World Trade Organization.

18.3 Procurement Rules Applicable to Natural Monopolies

Legislation provides special procurement rules for entities operating within a natural monopoly. According to the *Natural Monopolies Law*,⁸⁴ natural monopolists must carry out open tenders when buying goods, works and services for expenses that are included in the prices (or maximum levels of prices) or tariff-estimates for regulated services. Natural monopolists can use other methods of procurement for goods, services and works (e.g., purchase from one source) only if this possibility is directly provided by law.

18.4 Samruk-Kazyna Procurement Rules

Under the *Law on the National Welfare Fund*,⁸⁵ the national welfare fund “Samruk-Kazyna” and the companies it owns 50 percent or more of the shares of, either directly or indirectly, must comply with special procurement rules approved by the Samruk-Kazyna board of directors. Although the Samruk-Kazyna procurement rules are similar to the state procurement rules in most respects, they allow greater flexibility.

18.5 Other Procurement Rules

Certain other state entities and state owned companies are subject to their own procurement rules. For example, as mentioned above the

⁸⁴ The law *On Natural Monopolies and Regulated Markets* dated 9 July 1998, as amended.

⁸⁵ The law *On the National Welfare Fund* dated 13 February 2009, as amended.

National Bank and its subordinate and affiliated entities are subject to separate procurement rules approved by the National Bank.⁸⁶ 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.⁸⁷ Certain other national holding and management companies have their own procurement rules developed on the basis of standard procurement rules approved by the Government.

19. Compliance with Anti-Corruption Regulations

19.1 General

The main components of Kazakhstan's anti-corruption legislation are the anti-bribery provisions of the *Criminal Code*,⁸⁸ *Anti-Corruption Law*,⁸⁹ *State Service Law*⁹⁰ and *Administrative Code*.⁹¹

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.

⁸⁶ *Rules For Purchasing Goods, Works and Services by the National Bank and Legal Entities with respect to which the National Bank Acts as a Founder (Competent Body) or Shareholder* approved by the resolution of the management board of the National Bank dated 24 December 2014.

⁸⁷ *Rules For Organizing and Conducting Purchases of Pharmaceuticals, Preventive (Immunobiological, Diagnostic, Disinfecting) Preparations, Medical Devices and Equipment, Pharmaceutical Services for the Purposes of Providing Guaranteed Free Medical Care* approved by Governmental Resolution No. 1729 dated 30 October 2009.

⁸⁸ Criminal Code of the Republic of Kazakhstan dated 3 July 2014.

⁸⁹ The law *On Combating Corruption* dated 18 November 2015.

⁹⁰ The law *On State Service* dated 23 November 2015.

⁹¹ Code on Administrative Violations of the Republic of Kazakhstan dated 5 July 2014.

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 extra-territorial application similar to the U.S. FCPA or the U.K. 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.

Although Kazakhstan has comprehensive anti-corruption legislation, prosecution for corruption offences 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, or for repeated violations - by double the initial penalty.

19.2 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 also the following government officials:⁹²

⁹² Please note that the list is not exhaustive.

- members of 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 of the so-called “quasi-state entities”(i.e. entities affiliated with the state).

Accordingly, provision of benefits to the above officials is generally prohibited in Kazakhstan, and may amount to a criminal or administrative offence 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.

19.3 Facilitating payments, 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 he or she is legally required to perform) or gifts provided in accordance with the generally accepted norms of courtesy and hospitality.

Thus, as a general rule, providing such facilitating payments or gifts may lead to liability under the Criminal or Administrative Code. There are certain limited exceptions from 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, and during

such forums the officials may be permitted to accept certain limited gifts (benefits).⁹³

However, since the exceptions are very narrow and specific, they should be applied carefully in practice.

⁹³ Please note that this exception does not apply to category (v) of the officials mentioned above.

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