

# *Doing Business Guide Kazakhstan 2017*





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# 1. Kazakhstan – a profile

## 1.1 Government Structure

### Overview

The Republic of Kazakhstan is a unitary state with a presidential form of government. The government structure is based on a three-branch system: executive, legislative and judicial branches.

Kazakhstan passed its own constitution as an independent state in January 1993, a second, and currently effective, Constitution was approved by national referendum in August 1995.

In December 1997, the capital was moved from Almaty to Akmola, now renamed to Astana, by presidential decree and was officially inaugurated on 10 June 1998.

### The President

The President is the head of state, its highest official who determines main directions of domestic and foreign policy and represents Kazakhstan within the country and in international relations. Nursultan Nazarbayev has led Kazakhstan since 22 June 1989, initially as the First Secretary of the Communist Party of the Kazakh SSR. Since the establishment of the presidential post on 24 April 1990, Mr. Nazarbayev has been the President, winning successive elections. Under the current Constitution, the President is elected for five years and may be re-elected for another 5-year term. The same person may not be elected as a President more than two times in a row, but this restriction shall not apply to the first President.

The President has broad powers and authorities under the Constitution, including appointment of a Prime Minister, other members of the Government, regional heads of executive bodies, issue decree, which in certain cases may have the force of law, dissolve Parliament, veto laws and other authorities.

### National Government

The Government is the main executive authority. The Government is formed by the President in accordance with the Constitution and is directly accountable to the President. The Government issues regulations in line with existing legislation. It consists of the Prime Minister and his or her deputies, ministers and other key officials. The Prime Minister is responsible for direct management of the Government and can sign resolutions or issue orders. Ministers decide on the structure of the ministries and agencies for which they are responsible.

### Local Government

Kazakhstan is divided into 14 administrative regions (oblasts) and two cities of special status – Astana and Almaty. Local public administration is represented by local representative (oblast, rayon and city maslikhats) and executive (oblast, rayon and city akimats and rural akims) bodies, which are responsible for management of the respective territory. The head of the regional executive body, *Akim*, is directly appointed by the President and serves as the representative of the President at the local level. The Akim's power is terminated







when a newly elected President is inaugurated, though the existing *Akim* will continue to perform his or her duties until the new President appoints a new *Akim*.

*Maslikhats* as local legislative bodies express the will of people in the respective administrative-territorial units with due consideration of national interests.

### **The Parliament**

The Parliament is the highest representative and supreme legislative body. The Parliament consists of two Chambers acting on a permanent basis: the Senate (the upper Chamber) and the *Majilis* (the lower Chamber).

The Senate is formed by appointed and elected senators. The President appoints fifteen senators, while the remaining senators are elected by two from each region and cities of special status. In total, there are forty-seven senators. Senator's term is six years.

The *Majilis* consists of one hundred and seven deputies. Ninety-eight *Majilismen* are elected based on the universal, equal and direct right under secret ballot from political party list. The Assembly of the People of Kazakhstan elects the remaining nine deputies. The term of the *Majilismen* is five years.

One person may not be a member of both Chambers simultaneously.

Parliament's role is to approve the Prime Minister and other key government positions nominated by the President. The Parliament is responsible for approving the Constitution and passing constitutional amendments, adopting laws and other legislation and exercising control over the implementation of legislation. The Parliament also ratifies international treaties.

### **Courts**

Since 1 January 2016, Kazakhstan has a three-tier court system:

- Specialized district courts, district courts and courts equivalent to them;
- Appellate courts; and
- The Supreme Court.

The Constitutional Council is a standalone state body, which ensures supremacy of the Constitution over the whole of Kazakhstan. The Constitutional Council consists of seven members, whose authority last for six years. The main functions of the Constitutional Council are to decide on correctness of elections of the President, deputies of Parliament, and an all-nation referendum in case of disputes, to review laws, Parliament resolutions and international treaties for compliance with the Constitution and to provide official interpretation of the Constitution's provisions.

There is also the Court in the International Financial Centre Astana, which consists of two instances and is not included in the court system.

In addition, there are several international commercial arbitrations in Kazakhstan, which settle disputes if at least one of the parties is a non-resident of Kazakhstan.

## **1.2 Legal System**

### **Legislative Framework**

Kazakhstan has the Romano-Germanic (so-called "continental law") legal system in common with certain countries in continental Europe (i.e., Germany, France, Italy, Spain, etc.), South and Middle America, CIS, etc. In contrast with the Anglo-Saxon (so-called "common law") legal system mainly

## 1.2 Legal System

based on judicial precedents, the Romano-Germanic legal system establishes supremacy of “written laws”.

The main legislative act is the Constitution of the Republic of Kazakhstan adopted by the Republican Referendum on 30 August 1995. The Constitution has the highest legal force, and all other laws should comply with the principles set forth in the Constitution.

In addition to the Constitution, legal system includes various legislative acts, including the codes, laws and other regulatory acts of state authorities. The following are the main codes:

1. Civil Code regulating main principles and concepts of civil law relations between the parties;
2. Entrepreneurial Code regulating main principles and concepts of state support of entrepreneurial activities, including provision of state incentives, competition protection, public private partnership, etc.;
3. Tax Code regulating taxation as well as payment of other obligatory payments to state budget;
4. Labour Code regulating rights and obligations of employers and employees, including branches and representative offices of foreign companies working in Kazakhstan;
5. Land Code regulating status of lands as well as rights and obligations arising from title to land plots;
6. Code on Customs Affairs regulating main principles and concepts of customs administration;
7. Code on Health of Population and Healthcare System regulating healthcare system, including activities of healthcare and pharmaceutical companies;
8. Ecological Code regulating rights and obligations of parties concerning safety of ecological system;
9. Water Code regulating water fund system;
10. Forestry Code regulating forestry fund system;
11. Code on Marriage and Family regulating relations on marriage and status of family;
12. Criminal Code defining criminal offences and regulating main principles and concepts of protection of the state and society from criminal offences;
13. Code on Administrative Violations defining administrative violations and regulating main principles and concepts of protection of the state and society from administrative violations;
14. Civil Procedural Code regulating court procedures relating to civil law disputes and certain cases concerning administrative violations.

There are also laws and other legislative acts passed by state authorities, which regulate in more detail the relations covered by the codes.

To be effective, all legislative acts and international treaties are published in official mass media so they are easily accessible to the population.

### *Hierarchy of normative legal acts*

To avoid potential contradictions/conflicts between the

legislative acts, there is a hierarchy of regulatory acts stipulated by the Law on Normative Legislative Acts. The hierarchy of the legislative acts is as follows:

1. Constitution;
2. Laws introducing amendments to the Constitution;
3. Constitutional laws and the Decrees of the President having the force of constitutional law;
4. Codes;
5. Laws and the Decrees of the President having the force of law;
6. Regulatory Resolutions of the Parliament and its Chambers;
7. Regulatory Decrees of the President;
8. Regulatory Resolutions of the Government;
9. Regulatory Orders of the Ministers and other heads of Central State Authorities; Regulatory Resolution of Central State Authorities, Central Election Committee, Accounts Committee for Control Over Execution of the Republican Budget;
10. Regulatory Orders of the heads of subdivisions of Central State Authorities;
11. Regulatory Resolutions of *Maslikhat*; Regulatory Resolutions of *Akim*;

Each of the legislative acts of a lower level should comply with the acts of the higher level. None of legislative acts should contradict the Constitution. International treaties ratified by the Parliament have priority effect over the legislative acts, except the Constitution.

If contradictions exist between norms of legislative acts of different levels, norms of act of higher level should have the priority. Upon occurrence of contradictions between norms of legislative acts of the same level, norms introduced later have the priority.

Regulatory resolutions of the Constitutional Council and of the Supreme Court are not within the scope of the hierarchy. The Constitutional Council provides official interpretation of the Constitution and reviews other legislative acts, which must not contradict provisions of the Constitution. The Supreme Court has authority to explain provisions of legislative acts to lower instance courts.



## International Agreements

Kazakhstan is a member state of the Vienna Convention on the Law of Treaties dated 23 May 1969 and undertook all obligations set forth therein. To implement the process of execution of international treaties, Kazakhstan has the Law on International Treaties.

The Law on International Treaties stipulates certain types of international treaties subject to ratification by the Parliament. In particular, the following international treaties require ratification, if they (their):

1. subject matter is the rights and liberties of an individual and citizen;
2. fulfilment require amending current legislation or adoption of new laws as well as establishing rules different from current legislation;
3. relate to delimitation of Kazakhstan boundaries with other countries, including international treaties on state boundaries as well as delimitation of exclusive economic zones and continental shelf of Kazakhstan;
4. relate to principles of inter-state relations, disarmament and arms control, safeguarding international peace and security, as well as peace international treaties and international treaties on collective security;
5. relate to participation of Kazakhstan in inter-state associations and international organizations if such international treaties stipulate transfer of certain sovereign rights or creates binding obligation to fulfil decisions of the bodies of such international organization;
6. relate to state loans;
7. relate to provision by Kazakhstan of economic and other aids, except for humanitarian aid and official development aid;
8. ratification is requested by signatory parties;
9. require ratification.

Currently, Kazakhstan is a participant of a number of international treaties, among others, the Treaty on Civil and Political Rights (New York, 1966) and the Treaty on Economic, Social and Cultural Rights (New York, 1966). Kazakhstan committed to implement the rule of law at all levels when it agreed on the UN Declaration on the rule of law in September 2012. Kazakhstan is also a member of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958), the Hague Convention Abolishing the Requirement of Legalization of Foreign Public Documents (5 October 1961), and the United Nations Convention Against Corruption (31 October 2003).

Kazakhstan is also a member of various international and regional organizations. Kazakhstan is a member of the Commonwealth of Independent States.

On 2 March 1992, Kazakhstan joined the United Nations.

On 6 October 2007, Kazakhstan, Russia and Belarus signed the treaty on establishment of the Customs Union with a common customs territory. 6 July 2010 was the date of the official start of the functioning of the Customs Union.

Kazakhstan actively cooperates with the EU and in order to develop stronger mutually beneficial long-term relations, concluded an agreement on partnership and cooperation,

On 30 November 2015, Kazakhstan became official member of WTO. Kazakhstan committed to harmonize its legislation with the WTO Accession Protocol provisions, and accepted obligations on numerous service sectors. The WTO Agreement will be valid over all Kazakhstan, including regions involved in cross-border trade, special economic zones and other areas with special regimes for tariffs, taxes and regulation. The changes will affect monetary, fiscal and economic policies and mechanisms for their formulation and implementation; trade policy and the trade-related intellectual property regime; services trade policies; and transparency in trade agreements.

## 1.3 People

### Population

As of December 2015 the population of Kazakhstan is 17 670 900 people. Population density is 6.3 people/km<sup>2</sup>. Ethnic structure of Kazakhstani society according to the 2009 national census is as follows: Kazakhs - 63.1%; Russian - 23.7%; Uzbeks - 2.9%; Ukrainians - 2.1%; Uighurs - 1.4%; Tatars - 1.3%; Germans - 1.1%; other nationalities - 4.5%.

### Language

The main regulation is the Law "On languages in the Republic of Kazakhstan". The main languages are Kazakh and Russian. Kazakh language has a status of the state language. Russian language is officially recognized as the language of interethnic communication.

In accordance with the Law On Languages, all transactions between individuals and/or legal entities in Kazakhstan, executed in writing, shall be in Kazakh and Russian. Agreements involving foreign individuals and legal entities, executed in writing, shall be in Kazakh and in another language acceptable for parties.

However, non-compliance with the above-mentioned rule does not led to invalidation of any agreement.

## 1.4 Economy

### General Overview

Kazakhstan, the second largest of the former Soviet republics in land mass, has huge fossil fuel reserves as well as other minerals and metals. It also has considerable agricultural potential with its vast steppe accommodating both livestock and grain production. The industrial sector relies on the extraction and processing of these natural resources.

Kazakhstan aspires to be one of the top 30 developed nations by 2050. In addition to oil and gas, Kazakhstan has significant reserves of iron ore and non-ferrous metals (lead, magnesium, titanium, zinc, molybdenum, silver, copper, gold, tin, industrial diamonds, chrome, uranium, tungsten, bauxite, manganese, vanadium, beryllium, nickel, rhenium and gallium). The country also has large coal deposits in Karaganda, Ekibastuz, Maikubinsk and Kushmurun.



The "Sovereign Wealth Fund "Samruk-Kazyna" JSC (Samruk-Kazyna) has complete or partial ownership of many strategically important companies. These companies operate in priority sectors of the national economy: oil & gas, power, energy, metallurgy, petrochemicals and infrastructure.



Measurement/Year	2012	2013	2014
<b>GDP (USD, billion)</b>	203,52	231,88	217,87
<b>GDP per capita (USD)</b>	5192,57	5425,34	5575,55
<b>Inflation (%)</b>	4.8%	9,7%	6,0%

## Transportation

**Roads:** Kazakhstan has approximately 148,000 kilometres of public roads. The major artery is the 1,241-kilometer road between Astana and Almaty.

With assistance from the European Bank for Reconstruction and Development, an important highway is being completed along the Caspian coast between Turkmenbashi in Turkmenistan and Astrakhan in Russia, serving Kazakhstan's western oil outposts. There are 46 road crossings on the border with Russia, seven each on the borders with Kyrgyzstan and Uzbekistan and six on the border with China.

**Railroads:** Kazakhstan has approximately 14,800 kilometres of rail line. A high priority is construction of a shorter rail route across the country to link western China with Russia. Construction of the railroad "Zhetygen-Korgos" is a key transport industry projects to connect Kazakhstan and China. The length of the railway is approximately 300 km.

**Ports:** Major ports are the cities of Aktau and Atyrau on the Caspian Sea and the Irtysh River ports of Oskemen, Pavlodar and Semey, which serve the northeastern industrial sector.

**Civil Aviation:** The number of passengers travelling by air has risen from approximately 3.79 million people in 2011 to more than 4.92 million in 2014. Air Astana is the main domestic airline. It serves a significant portion of Kazakhstan's international and domestic passenger flights. Air Astana operates a fleet of approximately 30 aircraft including Boeings 767, and 757, and the Airbus A319, A320, A321 and Embraer 190.

**Pipelines:** The total length of pipelines is approximately 16,300 kilometres: 10,100 of natural gas pipelines and 6,200 of oil pipelines. Kazakhstan is linked to the Russian pipeline system by the Atyrau–Samara line and to Russia's Black Sea oil terminal at Novorossiysk by the Caspian Pipeline Consortium line. Kashagan is a very significant oilfield located in the Northern part of the Caspian Sea. The Kashagan Field has reserves of approximately 13 billion barrels of crude oil. The Tengiz oilfield also plays a major role in the economy.

**Telecommunications:** Mobile operators offer a range of services including mobile internet, mobile connection, Wi-Fi, and TV. Key providers include Kazakhtelecom (the state-owned national telecommunications company), Kcell, Beeline, and Tele2. Mobile penetration is high.

## 1.5 Foreign Trade

Approximately three-quarters of Kazakhstan's exports are intermediate goods and raw materials. Finished goods constitute a small part. Exports comprise: 77% mineral products; 13% metals and metal products, of which more than one-quarter are copper and copper products; and the remaining 11% include grain, chemical and related products, machinery, and consumer goods. Most exports are to the European Union (51%), China (16%) and the CIS countries (12%, from which exports to Russia are approximately 7%).

Imports are from the countries of the CIS (approximately 51% of which the Russian Federation is 39%), the EU (17%) and China (16%). The main imports are: (i) machines, equipment and vehicles (ii) metals and metal products (iii) chemical and related products and (iv) mineral products.







## 2. Business entities

### 2.1 Legal Framework

Foreign and local investors may establish their legal presence in Kazakhstan through various legal forms. The following legal forms are commonly used:

- legal entity in the form of a limited liability partnership (“LLP”) or a joint stock company (“JSC”); or
- Subdivision of foreign legal entity: a branch or a representative office (representative offices are mostly used for preparatory and auxiliary activities and are not allowed to carry out commercial activities).

Selection of an appropriate legal form depends on various factors, such as:

- complexity of incorporation process;
- certain restrictions/prohibitions on foreign participation in legal entities carrying out certain activities;
- minimum charter capital requirements;
- other regulatory aspects (foreign direct investment registration, mandatory annual audit of financial statements, requirements on disclosure of information, requirements on composition of governing bodies, licensing matters, requirements on conclusion of agreements with third parties);
- contractual arrangements of shareholders on company corporate governance;
- currency control matters; and
- complexity of liquidation process.

Selection of the “right” legal form may also depend on commercial and operational needs.

### 2.2 Limited Liability Partnerships

A LLP is a legal entity with limited liability and charter capital divided into participation interests of founders (participants). A limited liability partnership may be established by one or several individuals or legal entities, including foreign legal entities. There is no limitation as to the number of participants; however, LLP cannot have as a sole participant another LLP, which, in turn, is owned by one person (so-called “anti-chain” rule). In case of noncompliance with this rule, justice authorities may reject initial registration of LLP.

The participants of an LLP are not liable for LLP’s obligations and bear the risk of losses connected with the operations of LLP to the extent of the value of their charter capital contributions, except for certain cases (i.e., bankruptcy proceedings).

LLP is established by resolution of general meeting of its founders or by decision of a single founder. The process of establishment of LLP starts with execution/adoption of a

foundation agreement (if there is more than one founder) and ends with registration of the legal entity with the justice authorities. The foundation agreement must contain provisions on establishment of LLP, its trade name and address, list of founders, size of charter capital, size of participation interest of each founder, procedure for contributing into charter capital, approval of the charter, allocation of net income and some other provisions. Founders who signed the foundation agreement become participants. Charter is another constituent document of LLP and it defines its name, address, competence of internal bodies, procedure for reorganization and liquidation.

In case of contradiction between the foundation agreement and the charter, the foundation agreement shall prevail in regulating internal relationship between founders, and the charter shall prevail if application of the charter provisions may affect relationship of LLP with third parties.

#### 2.2.2 Governing Bodies

The governing body of LLP is the general meeting of its participants. Unless the charter provides otherwise, voting rights of participants are proportional to their contributions to the charter capital.

The company is managed by a collective or an individual executive body.

The charter may provide for the establishment of a supervisory board and/or an audit committee, which exercises control over executive body’s activities. The charter determines the procedure for meetings of the audit committee and its work. The audit committee has the right to demand all necessary materials, accounts and other documents from company officials and to receive personal explanations from them either in written or verbal form.

Members of the executive body may not simultaneously be members of the audit committee/supervisory board.

#### 2.2.3 Charter capital

Charter capital of LLP is formed by contribution of participants. Participation interest is not a share or securities and is not subject to securities market regulation. As a rule, the minimum charter capital of LLP should be equal to 100 MCI, approximately USD 705, and for small types of business the minimum charter capital may be set at a zero level.

The initial charter capital of LLP should be formed within one year from the date of LLP’s initial registration, unless the

resolution of the general meeting of founders provides for lesser period. The charter capital of LLP may also be formed via in-kind contributions, the value of which is agreed by LLP's founders in the foundation agreement. If the amount of in-kind contribution exceeds 20,000 MCIs, approximately USD 140 930 , then independent valuation of such in-kind contribution by a licensed appraiser would be required.

Participation interests in LLP are freely transferable. A participant may transfer its participation interest to (an) other participant(s) and to a third party (the foundation documents may provide for special conditions when selling the shares), but participants as well as the partnership itself have pre-emptive rights to purchase the participation interest before any third party.

## **2.2.4 Liquidation**

LLP may be liquidated in the following circumstances:

- by resolution of a general meeting of participants; or
- in accordance with a court decision as provided for by legislation, including for reasons of insolvency, invalid registration due to serious violations during its establishment, conduct of systematic activities contradictory to its charter, carrying out activities without proper licences/permission or activities restricted by the law, or in other cases stipulated by the law.

Termination may be effected through reorganization or liquidation. Liquidation is carried out by a liquidation committee appointed by the general meeting in agreement with its creditors, or in the event of a court decision, by the court.

## **2.3 Joint Stock Company**

### **2.3.1 Overview**

A Joint Stock Company is a legal entity that issues shares (securities) to raise funds for its activities. There is no limitation on the number of shareholders. Shares of JSC are freely transferable.

Shareholders of JSC are not liable for JSC's obligations and bear the risk of losses connected with the operations of JSC to the extent of the value of their shares.

There are, however, certain exceptions to this rule.

JSC is established by resolution of general meeting of its founders or by decision of a single founder. The process of establishment starts with execution/adoption of a foundation agreement (if there is more than one founder). The foundation agreement must contain some mandatory provisions; however, it is valid only up to the day of registration of share issue. Charter is the only constituent document of JSC after registration of share issue and it defines its name, address, competence of internal bodies, procedure for reorganization and liquidation and other provisions.

JSC is established by resolution of general meeting of its founders or by decision of a single founder. The process of

establishment starts with execution/adoption of a foundation agreement (if there is more than one founder). The foundation agreement must contain some mandatory provisions; however, it is valid only up to the day of registration of share issue. Charter is the only constituent document of JSC after registration of share issue and it defines its name, address, competence of internal bodies, procedure for reorganization and liquidation and other provisions.

The shares of JSC are securities and therefore JSC and its shares are subject to securities market regulation in addition to general legislation applicable to LLP.

Shareholders of a newly registered JSC must pay the initial charter capital within 30 days from registration of the JSC. The minimum charter capital is equal to 50 000 MCIs, approximately USD 352 329 . Contributions to the charter capital can be made either in monetary form or in kind. However, the value of any contribution in kind must be determined by a licensed appraiser. Specific legislation provides different requirements for minimum charter capital for banks, insurance companies and private investment funds, which have to be established in the form of JSC.

### **2.3.2 Governing Bodies**

JSC has the following bodies:

- superior body – general meeting of shareholders;
- management body – board of directors;
- executive body (individual or collective); and
- other bodies set out by the law and (or) the company's charter, e.g. an audit committee.

The general meeting has the exclusive power to amend and approve the company's charter. It also appoints the board of directors which in turn appoints the executive body and the audit committee, and exercises any other exclusive powers reserved to it under the law and (or) the charter.

The board of directors supervises the executive body of the JSC and has an exclusive right to authorize certain transactions. The executive body, which can be represented either by collegial body or by an individual executive officer, is responsible for the day-to-day management of the company.

The audit committee (or external auditor) monitors the company's activities. Members of the audit committee cannot simultaneously act as the members of the management or executive body.

The convening of a general meeting of shareholders is compulsory, unless all voting shares in JSC belong to a single shareholder. The general meeting of shareholders must take place at least once a year. Certain decisions may require more than a simple majority vote of the shareholders present. Extraordinary meetings may be called by the board of directors, a major shareholder (i.e. any shareholder with 10% or more of the voting shares) or a liquidation committee in case of a voluntary liquidation of JSC.

The general meeting of shareholders must approve the annual financial statements.

### 2.3.3 Share capital

The issue of shares in JSC must conform to Kazakhstan securities legislation and must be registered with the National Bank of Kazakhstan (“NBK”).

There are two types of shares: ordinary shares (voting shares) and preferred shares, although the latter may not exceed 25% of the total number of placed shares of JSC. Subject to the provisions of the securities legislation, shares are issued in book entry form. The company may also issue other securities, and the issuance procedure, conditions, etc. should comply with the legislation on securities.

The capital of JSC may be increased by placement of its declared shares.

Shareholders are entitled to receive dividends and title on the company’s property in case of its liquidation. A holder of an ordinary share has the right to vote on any issue, which is considered at the general meeting of shareholders.

Preferred shares give the shareholders priority rights to receive dividends in the amount determined by the charter and also, as determined by law, to receive outstanding dividends before holders of ordinary shares in the event of liquidation. A holder of a preferred share has no right to participate in the management of JSC except for certain cases prescribed by article 13.4 of the Law on Joint-Stock Companies.

Dividends may be paid in monetary form or in the form of securities, but dividends on preferred shares can be paid in monetary form only. Payment of dividends by securities is allowed provided that such payment is made via “declared” shares and issued debentures with written consent of the shareholder. Distribution of dividends on ordinary shares may be made only after adoption of the resolution by the general meeting of shareholders.

The law recognizes the concept of a “golden” share. The founders may introduce only one “golden” share in a JSC, which does not form part of the capital and whose holder does not receive dividends. The holder of the “golden” share participates in the management of JSC through the right of veto on decisions (stipulated in the charter) to be made by general meetings, the board of directors and the executive body.

### 2.3.4 Public company

In 2007, Kazakhstan introduced a new additional type of JSC, i.e. the public company. The public company is a company that meets certain requirements aimed at securing its public nature (e.g. the shares must be placed with an unlimited circle of investors; not less than 30% of common shares should be owned by shareholders, with each of them owning not more than 5% of the shares).

### 2.3.5 Liquidation

JSC may be liquidated in the following circumstances:

- by resolution of a general meeting; or
- in accordance with a court decision as provided for by legislation, including for reasons of insolvency, invalid registration due to serious violations during its establishment, conduct of systematic activities contradictory to its charter, carrying out activities without proper licences/permission or activities restricted by the law, or in other cases stipulated by the law.

Termination may be effected through reorganization or liquidation. Liquidation is carried out by a liquidation committee appointed by the general meeting in agreement with its creditors, or in the event of a court decision, by the court.

## 2.4 Registration Process

The registration process of a LLP/JSC/branch/representative office is almost similar and carried out as a so-called “one-stop-shop”: submission of all documents at a single location – TsON – Public Service Centre.

The registration involves review and approval by the justice authorities of the filed documentation. Upon verification of the same, the state authorities issue certificate on state registration with assigned business identification number and include a LLP/JSC/branch/representative office into the National Register of Business Identification Numbers.

The Law on State Registration of Legal Entities and Record Registration of Branches and Representative Offices states that registration, except JSC, should take one business day. JSC should be registered within ten business days. In practice, it often takes approximately one month from the date of filing documents.

The duty for registration of a legal entity is 6.5 MCIs, approximately USD 45.

Post registration formalities include:

1. registration for VAT (if applicable);
2. open a bank account;
3. during the first 10 days of the month, following the month of registration, LLP/JSC/branch/representative office shall conclude an agreement on mandatory insurance of its employees against accidents;
4. even if there is no activity, LLP/JSC/branch/representative office has to start filling tax and statistical reporting;
5. receipt of a corporate seal, e.g. to stamp executed documents, contracts and open a bank account, etc. Currently private legal entities are no longer required to have corporate seals with certain exceptions;
6. registration of charter capital contributions made by a non-resident with the NBK if such contribution exceeds USD 500 000;





## 2.5 Branches and Representative Offices

Neither a branch nor a representative office is a separate legal entity. It is a subdivision of a foreign entity's head office. It is formed on the basis of Regulation and Resolution of the head office.

A foreign legal entity may establish branch or representative office in Kazakhstan by:

- preparing a resolution of the head office to set up the branch or representative office;
- preparing regulations, i.e. a set of rules governing operation of the branch or representative office;
- appointing a local head of the branch or representative office and issuing a power of attorney; and
- submitting necessary documents for records registration to the local office of the Ministry of Justice.

A branch is permitted to carry out full commercial activities on behalf of the head office. A representative office is allowed only to undertake representative functions and protection of the head office's interests. Neither branch nor representative office requires a formal capital injection to commence operations.

Generally, parent loans provided to its branches or representative offices are not subject to licensing/registration/notification with the NBK. A branch or representative office may be liquidated by decision of its head office.

## 2.6 Consortium

The Civil Code defines a consortium as a temporary association in which legal entities combine certain resources and coordinate efforts to solve specific business issues. A consortium is not a separate legal entity. A consortium has features similar to those of a full partnership. The revenue and expenses of a consortium are passed through to participants. Participants in a consortium should register for tax purposes. One of the participants in a consortium typically serves as an operator of consortium.

## 2.7 Corporate restructuring

Corporate restructuring is regulated by the Civil Code and other relevant laws depending on the type of legal entity.

Pursuant to article 45 of the Civil Code, a reorganization of a legal entity includes merger, accession, division, spin-off and transformation of legal entity. Transformation of legal entity through change of its organizational and legal form is also permitted, and in some cases is obligatory if the legal entity contemplates to continue its activity (e.g. in the case of the loss of all general participants in a limited partnership).

When transforming a legal entity of one type into another (i.e. altering organizational and legal forms), rights and obligations of reorganized legal entity are transferred to new legal entity in accordance with conveyance act, which must contain provisions concerning legal succession with regard to every obligation of reorganized legal entity.

The conveyance act must be approved by owner of property of the legal entity or by the body which adopted the resolution on reorganization of the legal entity, and is required (together with foundation documents) for registration of new legal entities or introduction of amendments to foundation documents of existing legal entities. The assets (rights and obligations) are transferred to the legal successor at the moment of its registration, unless otherwise stipulated in the resolution on reorganization.

### 2.7.1 Merger

Under article 46 of the Civil Code, when legal entities merge or accede, rights and obligations of each of them are transferred to reorganized legal entity in accordance with conveyance act. In case of merger, a new company is created. In case of accession, one of the companies accedes to the other and the latter continues to exist.

Mergers or accessions of JSC are carried out by the combining their property through conclusion of merger or accession agreement, with the subsequent replacement of shares of the merged or acceded companies by shares of one company.

A legal entity is deemed to be reorganized on the date of registration of new legal entity. The assets (rights and obligations) are transferred to the legal successor at the moment of its registration, unless otherwise stipulated in the resolution concerning reorganization.

### 2.7.2 Division

When a division takes place, several companies are created from one company, with a division of balances and property. In this case, reorganized company is terminated. An alternative to the division is a spin-off, which involves separation of a company with a division of balances and property, but with the original company continuing to exist.

Under the Civil Code, when dividing or spinning off a legal entity, its rights and obligations are transferred to newly created or reorganized legal entities in accordance with division or spin-off balance sheet, as the case may be. The division or spin-off balance sheet must be approved by owner of property of legal entity or body, which adopted resolution on reorganization of legal entity.



## 3. Foreign investment

### 3.1 General Overview

There were many changes in investment legislation in 2015. In particular, the Entrepreneurial Code has been adopted. The new Code codifies provisions of legislative acts including:

- Law on Investments;
- Law on Private entrepreneurship;
- Law on the State support of industrial-innovative activity and many others.

Note that the new Law on public-private partnership has been adopted. The provisions of this law give outline and understanding of institute of PPP.

#### *Investment protection*

New investment legislation establishes broad legal and economic framework for encouragement of investments, provides protection of investors' rights and details for state support of investments and sets procedure for settlement of disputes.

Under the Entrepreneurial Code any individual or legal entity (foreign or Kazakh) who invests in Kazakhstan can be classified as an investor. As a rule, investors have right to invest in any objects and types of entrepreneurial activity. However, there are some restrictions for investing in certain types of activity or areas due to national security.

The Entrepreneurial Code protects rights and interests of investors. Investors have the right for compensation of damages caused by (i) issuance of acts by state authorities, which do not comply with laws, as well as (ii) by illegal acts (omissions) of state officials. Kazakhstan guarantees stability of investment contracts, except for:

- 1) changes mutually agreed by investor and state bodies;
- 2) changes in the legislation, including international treaties, related to procedure and terms of import, production and sale of excisable goods;
- 3) changes in laws related to national security, public policy, and public health and morality.

Nationalisation and requisition can occur only in exceptional circumstances. Compensation of any losses, resulting from nationalisation and requisition is guaranteed for investors in full amount.

The concept of "one-stop-shop" and "investment ombudsman" exist in Kazakhstan. The investor has opportunity to receive any public service centrally from "one window". In this case, the involvement of investors in collection and preparation of required documents is minimum.

Investors can protect their rights and interests through the mechanism of "Investment Ombudsman" before applying for dispute settlement to the court. This mechanism is intended to improve investment climate.

Note that the new Civil Procedure Code provides for special procedure and forum for settlement of disputes arising from investment contracts signed between the investor and the Investment Committee of the Ministry for Investments and Development.

#### *Investment preferences*

In order to encourage investments, the government has established certain investment preferences for legal entities established in Kazakhstan, which may have foreign and/or local participants/shareholders. In order to receive investment preferences an applicant shall submit an application to the Ministry for Investments and Development and sign investment contract.

Investment preferences for investment projects include:

- i. exemptions from customs duties and VAT for import (effective from January 1, 2017); and
- ii. state grants in kind.

Investment preferences for priority investment projects include:

- i. exemption from customs duties and VAT for import;
  - ii. state grants in kind;
  - iii. tax preferences; and
  - iv. investment subsidies.
- i. Investment preferences for strategic investment projects include tax preferences.

Investment preferences are granted according to a list of priority types of business as well as a list of strategic investment projects, which is approved by the Government.

There is also a guarantee to investors implementing priority investment projects and strategic investment projects for stability in case of changes in tax and labour (concerning attraction of foreign employees) legislation. This means that provisions of above legislations at the date of concluding

investment contract would be stabilised for the period of the project and further amendments to these legislations will not be applicable to investor.

## 3.2 Public-Private Partnership

PPP is a form of cooperation between public partner and private partner, which meets the following criteria:

- relationships built on PPP contract concluded between public partner and private partner;
- medium and long-term implementation of PPP project (from 3 to 30 years depending on complexity of PPP project);
- joint participation of public partner and private partner in PPP project;
- integration of resources of public and private partners for implementation of PPP project.

One of the main tasks of PPP is to attract investment in state economy through integration of resources of public and private partners for development of infrastructure and life support systems of population.

PPP can be implemented in all sectors (spheres) of economy. However, there are some restrictions established by the President.

PPP could be financed through:

- funds of private partner;
- funds, borrowed in accordance with the legislation;
- funds of the state budget;
- funds of quasi-sector subjects;
- other funds, not prohibited by the legislation.

The following may be public partners:

- Government;
- Local authority;
- Other governmental bodies;
- Quasi-sector subjects.

The following may be private partners (except if acting as public partners):

- Private entrepreneur;
- Consortium;
- Joint venture;
- Legal entity.

Measures of state support include:

- State guarantee for infrastructure bonds;
- State guarantee for loans, attracted for financing of PPP projects;
- Transfer of exclusive rights to intellectual property of the state;
- State grants in kind;
- Co-financing of PPP projects;
- State guarantee of consumption of certain amount of goods and services produced through the implementation of PPP project.

The implementation of PPP project involves:

- concept development of PPP project;
- identification of a private partner through tender or direct negotiations;
- conclusion of PPP contract;
- realisation of PPP contract.

## 3.3 Special Economic Zone

The Law on Special Economic Zones defines “special economic zone” SEZ as a part of Kazakhstan with precisely identified boundaries, which has special legal regime for activities in priority industries. The zones are created for up to twenty-five years for specific purposes and with specific activities to be carried out within SEZs. Preferences include exemptions from certain taxes, customs duties, easier work permit rules, etc.

As of February 2016, there are eleven SEZs, including:

- “Astana New City” in Astana;
- “Aktau Seaport” in Aktau;
- “Innovation Technology Park” in Almaty;
- “Ontustik” in Sairam district in South-Kazakhstan;
- “National Industrial Petrochemical Park” in Atyrau oblast;
- “Burabai” in Akmola;
- “Saryarka” in Karaganda;
- “Khorghos – Eastern Gate” in Almaty;
- “Pavlodar” in Pavlodar;
- “Informational Technology Park” in Almaty;
- “Chemical Park of Taraz” in Dzhambul oblast.

SEZ provides the following preferences for its participants:

- Exemptions from customs duties;
- Preferences in relation to land;
- Tax preferences;
- Preferences in relation to attraction of foreign employees.

In particular, tax preferences include:

- CIT: 100% reduction;
- VAT: 0% rate (sale of goods fully consumed within SEZ operations, meeting the purposes of SEZ and included into the list of goods established by the Government);
- Land tax: 0% rate;
- Payment for the usage of land: 0%;
- Social tax: 0% rate.

In order to apply for tax incentives available in SEZ, a legal entity must meet the following requirements:

- it must be registered by the tax authorities in the SEZ;
- activities must be carried out exclusively in the SEZ;
- legal entity shall be participant of SEZ;
- 90% (in several cases – 70%) of aggregate annual income should be generated from sale of goods & services, which are included in the list approved by the Government consistent with the objectives of SEZ.



## 4. Foreign currency market and foreign currency rules

### 4.1 Overview

The Kazakhstan Tenge (“KZT”) was introduced in November 1993. The currency has depreciated in recent years, as support by the NBK has been reduced. As of 13 February 2017, the official exchange rate was approximately 322 KZT:\$.

The official market exchange rate of KZT against USD is determined as the weighted average exchange rate, established at 15-30 Astana time based on the results of two sessions of the Stock Exchange (the “KASE”), the morning (main) and daily (additional).

The NBK is the main authority for currency regulation and provides:

- (i) procedures and requirements on organising exchange operations with foreign currency in cash
- (ii) procedures for exchange transactions of residents and non-residents, including currency regulation regimes as registration and notification;
- (iii) procedures for monitoring currency operations of non-residents engaged in activities in Kazakhstan (currency monitoring);
- (iv) forms of accounting and reporting for currency transactions, mandatory for all residents and non-residents.

The Law on Currency Regulation and Currency Control is the main legal act that regulates currency operations. The regulations are established separately for individuals and legal entities.

Transactions between Kazakhstan residents should be in KZT, except certain banking transactions, sale and purchase of shares in foreign currency and transactions with participation of state authorised bodies. Transactions between residents and non-residents can be denominated in any currency. The regulations for non-residents are less restrictive as they allow conducting currency operations in KZT and in foreign currency. Foreign currency may be sold or purchased at banks or currency exchange providers that hold a license for carrying out such activities.

Certain currency transactions (operations) between residents and non-residents must be notified or registered with the NBK.

### 4.2 Transactions notification with the NBK

If a resident concludes a currency agreement with a non-resident, such transaction is likely to be subject to the notification regime under currency control regulations, if the following criteria are met:



- the amount of the currency transaction that will be received in property (or funds) in Kazakhstan and/or the Kazakhstan resident's obligation to return property (or funds) to a non-resident exceeds USD 500,000; or
- the amount of the currency transaction that will be transferred in property (or funds) from Kazakhstan and/or the Kazakhstan resident is entitled to receive property (or funds) from a non-resident which exceeds USD 100,000; or
- the amount of payment/transfer from a resident to a non-resident or from a non-resident to a resident on transactions with derivatives, as well as, when dealing with import/export of work and/or services exceeds USD 100,000.

In addition, legal entities (residents) should notify the NBK on opening of bank accounts, including deposits in foreign banks.

### 4.2 Transactions registration with the NBK

Currency transactions such as commercial credits in connection with the export and import of goods, direct investments, financial loans, other capital movement operations between non-residents and residents are subject to registration with the NBK if the following criteria are met:

- the amount of the currency transaction that will be received in property (or funds) in Kazakhstan and/or the Kazakhstan resident's obligation to return property (or funds) to the non-resident exceeds USD 500,000; or
- the amount of currency transaction that will be transferred in property (or funds) from Kazakhstan and/or the Kazakhstan resident is entitled to receive property (or funds) from a non-resident exceeds USD 100,000; and
- the period for rendering work/supply of goods term exceeds 180 calendar days (this condition applies only for financial loans and commercial credits).



## 4.4 Control record number

Residents are subject to compliance with currency control regulation associated with obtaining a contract record number for export/import contracts under which:

- the Contract value exceeds an amount equivalent to USD 50,000; and
  - Goods actually pass Kazakhstan state boundaries for the purpose of import/export, including under a supply service agreement or lease agreement on term, exceeding 1 year; or
  - Amendments in customs export procedures or release for domestic consumption of goods, previously placed under another customs procedure, as a result of transfer of ownership on such goods from a resident to a non-resident or from a non-resident to a resident; or
  - Transfer of a service agreement to an authorised bank that is not a contract record registration bank, including in case of suspension or termination of a licence on banking and other operations of a contract record registration bank; or
  - In case of assignment of receivables from a non-resident which is provided by the exporter or the importer in favour of the resident under an agreement with certain specified thresholds and circumstances as set by the Law on Currency Regulation and Currency Control.
- Replacement of the NBK registration certificates (of currency contracts) with a numbering system. The NBK would give a record number to every foreign bank account of an exchange control resident legal entity (for reporting purposes);
  - Electronic money issued by non-residents/residents for payment for goods and services would be considered as currency operations connected with the import/export of goods and services. (The definition of electronic money is an unconditional and irrevocable payment obligation kept in electronic form and accepted as a payment remedy in the system of electronic money);
  - The period of interest free loans by residents to non-residents should not exceed 5 years.

Discussion of this draft law in the Parliament is to be held in the second half of 2017.

If the above-mentioned criteria are met, then prior to execution of obligations under such transaction, a resident should obtain a contract record number, which is assigned by its servicing bank.

Currently NBK has published a draft Law “On Currency Regulation and Currency Control”. The draft law introduces amendments including:

- Recognition of branches/representative offices of foreign entities as residents of Kazakhstan for currency control purposes;
- New definitions including “Zones with a specific legal regime” and “participants of zones with a specific legal regime” (Astana

# 5. Banking and finance

## 5.1 Banking System

The main legislative act that regulates the banking system is the Law on Banks and Banking Activity.

The NBK is the central bank and represents the first (upper) tier of the banking system. All other banks represent the second (lower) tier with the exception of the Development Bank of Kazakhstan that has a special legal status.

The NBK within the limits of its authority represents the interests of Kazakhstan in its relationship with central banks and banks of foreign countries, international banks and other financial-credit organisations.

The NBK reports to the President but is independent in its activity.

The NBK regulates and supervises certain banking activities and basic conditions for the functioning of banks and organisations engaged in certain types of banking operations.

As of 13 February 2017, there are 34 second tier banks, 32 insurance companies, 46 professionals participating on securities market such as brokers and dealers, 11 organisations engaged in certain types of banking operations and 2 credit bureau. Authorization of the NBK is required to establish these entities. Banks are allowed to operate only in the form of joint stock companies.

As of 1 October 2016 the five largest banks according to the total value of assets are Kazkommertsbank, Halykbank, Tsesnabank, Sberbank of Russia and ATF Bank. At an enlarged meeting of the Government of Kazakhstan, President Nursultan Nazarbayev expressed his opinion to merge weak banks and instructed the NBK to act more categorically in solving problems with “outsiders”. In January 2017, Halyk Bank and Kazkommertsbank confirmed a potential transaction between them. Earlier, its license of “Kazinvestbank” to conduct banking and other transactions, as well as to conduct activities in the securities market was terminated. In early February, it was reported that “Tsesnabank” buys part of the shares of “Bank CenterCredit”. Islamic banking is permissible. An Islamic bank has no right to charge interest, to guarantee a return of the investment deposit or income to engage the finance (lending) activities related to production and/or trade of tobacco, alcoholic beverages, weapons and ammunition, gambling, and other types of business activities, financing (loan) prohibited by the Council for Islamic Financing Principles.

Establishment of specialized sectoral banks with state participation is not allowed, with the exception of Joint Stock Company “Housing Construction Savings Bank of Kazakhstan”.

Intergovernmental banks can be established based on an

an international treaty, where founders are the Government and another state.

There are two main banking associations:

- i. Kazakhstan Banks’ Association; and
- ii. The Financial Institutions’ Association of Kazakhstan.

The Anti-Money Laundering supervisory authority in respect of the financial sector is the Committee of Financial Monitoring of the Finance Ministry.

## 5.2 License and requirements

Only the NBK has the right to issue licenses to banks and any other entities for conducting banking transactions, including

- acceptance of deposits from legal entities and individuals;
- opening and keeping correspondent accounts of banks and nonbanking financial institutions and also of metal accounts of banks;
- cash transactions;
- receipt, counting, breaking into smaller denominations, exchange, packing and safe custody of coins and organization of exchange transactions involving foreign currency.

Legal entities and individuals who are residents and non-residents of Kazakhstan may be shareholders of banks. A legal entity, which has the status of a non-resident or a company registered in an offshore territory in accordance with the legislation of the state of its registration, may not be a shareholder of Kazakh bank.

A bank may be liquidated based on a decision of its shareholders with permission of the NBK or a court decision.





## ***5.3 Astana International Financial Centre***

At the 8th Astana Economic Forum in May 2015 Kazakhstan's President Nursultan Nazarbayev announced plans to create an Astana International Financial Centre (**AIFC** or the **Centre**) modelled on the Dubai International Financial Centre. The National Bank of Kazakhstan signed a cooperation agreement with DIFC, including but not limited to, advice on the Centre's legal and regulatory framework, staff training, and IT infrastructure. The Mazhilis and the Senate, the lower and upper chambers of Parliament, adopted the constitutional law, which was signed by the President on 10 December 2015 and came into force ten days later on 20 December 2015.

The major strategic directions for the development of the AIFC are Capital Markets, Asset Management, Islamic Finance, Fintech, Private Banking and Green Finance.

The Centre will provide certain privileges for investors:

tax exemption for 50 years until 1 January 2066 (corporate income tax on income from financial and auxiliary services, individual income tax, land tax, property tax);

simplified currency, visa and labor regimes for participants and employees of the AIFC.

A key feature of the AIFC is the presence of a separate legal system based on the principles of Common law, according to which the financial court of the AIFC and International Arbitration Centre will conduct its operations. This will ensure fairness and justice and will greatly enhance the credibility of Kazakhstan in the eyes of foreign investors.

The proposed structure of the AIFC includes four AIFC bodies, infrastructure organisations, as well as organisations engaged in financial activities in AIFC (licensed to operate by an authorized body responsible for the regulation of financial services and operations of members of the AIFC).







## 5.4 Insurance system

The Law On Insurance Activities is the main act that regulates insurance. Insurance activities are carried out with a license of the NBK. As of 13 February 2016, there are 32 insurance companies.

Only an insurance company, which is a resident of Kazakhstan may insure the property interest of a resident legal entity or an individual.

Individuals who are residents of Kazakhstan but temporarily outside of Kazakhstan for work, study, treatment or vacation are allowed to conclude insurance contracts with non-resident insurance companies for the period of such temporary stay.

A non-resident insurance (reinsurance) company may open a representative office without consent of the NBK. However, it shall notify the NBK within thirty business days from the date of registration with the justice authorities.

## 5.5 Capital Markets

Transactions with financial instruments on the organized securities' market of Kazakhstan are carried out at KASE.

KASE is the only Kazakhstan stock exchange.

KASE is regulated by the following legislation:

- The Civil code;
- Law on Joint-Stock Companies;
- Law on the Securities' Market;
- Law on Investment funds;
- Regulation of the activities of the organiser trading with securities and other financial instruments and other Regulations.

KASE is divided into six major sectors: foreign currency, shares, corporate bonds, government bonds, repo operations and derivatives.

Kazakhstan legal entities are allowed to place their shares on foreign stock exchanges. However, prior to a foreign listing, 20% of the shares to be placed must be offered on KASE on the same terms. Consent from the NBK is required for a foreign listing.





## 6. Labour relations

### 6.1 Employment contract

Employment relations in Kazakhstan are governed by the employment contract, a written agreement between the employer and the employee reflecting rights, responsibilities and mandatory provisions set out in the Kazakhstan Labour Code.

Employment contracts are usually entered into for a fixed term of one year but could be also concluded for a longer period or indefinite term. Some exceptions apply to employment contracts for the durations of specific, seasonal works or for replacement of temporary employees. Such contracts could be concluded for a term less than one year.

The probation period maximum term is three months. However, for executives and their deputies, chief accountants and their deputies, executives of branches and representative offices probation period could be up to six months.

The Labour Code sets out grounds for termination of employment contracts, including by termination by mutual agreement, expiration of employment contract, and termination initiated by the employee or the employer.

The employer has limited grounds for termination an employment contract such as liquidation of a company, redundancy,

inappropriate employee qualification, failure to pass probation and other. The Employer wishing to terminate employment contract should make a written notification as set out in the employment contract and pay compensation.

### 6.2 Working Conditions

Standard working hours are 40 hours a week, with special provisions for shift work. Remuneration is established by the employer independently but may not be lower than the minimum wage. There is minimum paid annual leave of 24 calendar days (excluding official holidays).

### 6.3 Social Security System

The employer must enter into mandatory social insurance and sign a mandatory employee accident insurance.

- (i) social insurance  
An employer is responsible for calculating and paying social contributions to the State Social Insurance Fund. An employee is the recipient of social benefits.
- (ii) employee accident insurance is designed to protect employees from accidents at work.  
If accident at work takes place, the employer has a responsibility set out by the Labour Code to record accidents, investigate and notify state authorities. The employer is also responsible for notifying an insurance company.

Statutory health insurance will be introduced in Kazakhstan from January 2018. All employers, including foreign legal entities operating in Kazakhstan through permanent establishment, as well as branches and representative offices of foreign legal entities will have to make contributions to the state medical insurance fund.

### 6.3 Social Security System

Expatriates coming to Kazakhstan for the term exceeding 120 days every calendar year to perform work activities are usually required to apply for a work permit and work visa.



Under Kazakh immigration law, foreign employees travelling to Kazakhstan for the purposes of engaging into productive activities will **require a work permit** even for short periods of time. Expatriates traveling to Kazakhstan to work on the basis of a work permit will be required to apply for a work visa to enter the country.

As general rule, the number of foreign employees attracted to Kazakhstan every year should not exceed quotas announced by the Government for attracting foreign labor force. Companies sponsoring work permit applications should send applications for quotas for the required number of expatriate employees by 1 August each year. Issuance of permits by the authorized labor authorities is carried out if there is no possibility find suitable candidates for jobs on the local labor market.

Citizens of Russia, Kyrgyzstan, Armenia and Belarus, member-states of the Eurasian Economic Union (EEU) are exempt from the requirement to apply for work permits to work in Kazakhstan and will not be counted when determining local content ratio.

There are number of other categories of non-Kazakhstan citizens who are exempt from applying for a work permit. These categories include, among others:

- executives of branches and representative offices of foreign companies;
- executives of investor companies signed investment contracts with the Government of Kazakhstan valued over USD 50mln;
- expatriates permanently residing in Kazakhstan;
- expatriates coming to work for the EXPO-2017 and Astana International Financial Centre.

Work permits will be valid in one region of Kazakhstan. Business trips to other regions will be possible if the total number of days on such trips does not exceed 90 calendar days collectively in one calendar year.

#### *Work permit application process*

Work permit application is a time-consuming process and should be planned by the sponsoring company well in advance. The overall end-to-end process could last 1.5-2 months. This does not include time required to collate all of the documentation.

The Committee of Labour, Social Protection and Migration reviews work permit application within 7 working days.

#### *State fees for work permit application*

State fee for the work permit applications were introduced from 1 January 2017. The amount will be payable in tenge every 12 months and depend on the industry sector and category of the employee. State fee for work permit will vary from approximately \$ 950 (137 Monthly Calculated Indices (MCIs) for a specialist role application to approximately \$1,730 (250 MCIs) for the executives.

## **6.5 Intercorporate transfer**

Intercorporate transfer is a temporary transfer of expatriates (on the positions of CEO, manager, specialist) from a foreign legal entity, incorporated in the member country of World Trade Organisation (WTO) to its Kazakhstan representative office / branch / subsidiary.

It is a temporary transfer, for a period determined by the employment contract, but no more than three years, with an option to renew for one year.

Sponsor companies wishing to use intercorporate transfer scheme for attracting international employees should meet the following criteria:

- 1) an expatriate employee remains to be an employee of the sending company;
- 2) an expatriate employee has at least one year of work experience within legal entity based on the territory of the WTO member state country;
- 3) compliance with qualification requirements under the applicable professional standards in Kazakhstan are met;
- 4) possible for attracting specialists in the priority sectors of economy. List of priority sectors set out by the Government of Kazakhstan.

The scheme is considered as straightforward mechanism for applying expatriates work permit application and does not require payment of annual state fees for application/renewal.

However, it involves processes of the local market search and the number of expatriate specialists should not exceed 50% of the sponsoring company total headcount.



## 7. Oil and gas, mining

### 7.1 Legal Regime

The Subsoil Use Law governs rights and obligations of subsoil users in relation to exploration, production and abandoning of subsoil operations.

The competent authority for extraction of oil, gas and uranium is the Ministry of Energy. The Ministry of Investment and Development regulates the extraction of solid minerals.

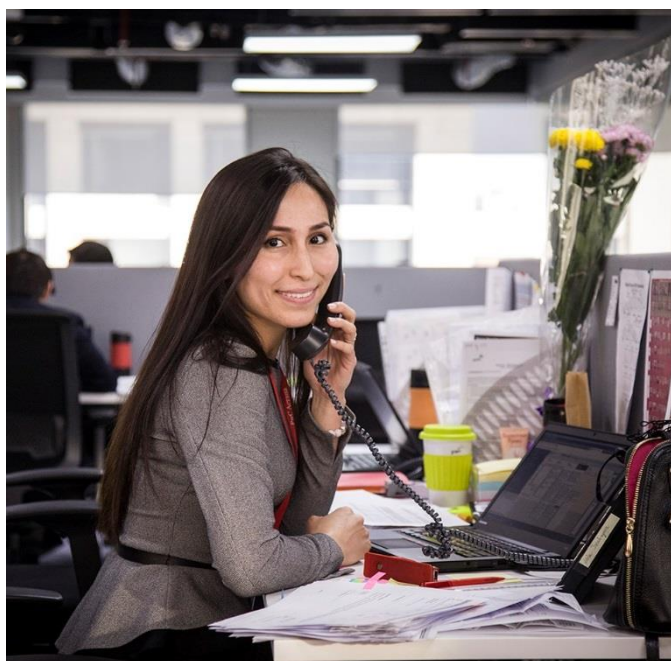
The competent authority issues rules and regulations, oversees tenders, grants subsoil use rights, represents the state in negotiations and in executing subsoil use contracts, approves work programs and amendments to subsoil use contracts, suspends or terminates subsoil use contracts and generally supervises subsoil users.

The Subsoil Use Law establishes extensive reporting requirements for subsoil users, requires compliance with stringent procurement rules and use of local content.

### 7.2 Subsoil Use Right

A subsoil use right may be granted for the following operations:

- state geological exploration of subsoil;
- exploration;
- production;
- combined exploration and production; and
- construction and (or) operation of underground facilities, not related to exploration or production.



There are three ways to obtain subsoil use rights:

- granting (i.e. receive the right directly from the state);
- transfer of right (i.e. a subsoil user transfers its right to another party);
- transfer of the right in accordance with the procedure of legal succession (in case of reorganisation of a legal entity or death of an individual holding the subsoil use right).

### 7.3 Granting of Subsoil Use Right by the state

The subsoil use right is granted through conclusion of a subsoil use contract for particular subsoil use area. In limited cases, the subsoil use right may be granted without subsoil use contract based on a written permission of the competent state body or local executive body.

The default rule is that subsoil use contract is entered into with the winner of a tender/auction. In cases, prescribed in the Subsoil Use Law a subsoil use contract may be concluded based on direct negotiations.

### 7.4 Transfer of the Subsoil Use Right

The Subsoil Use Law regulates transfer of subsoil use rights and (or) so-called “objects related to the subsoil use right”.

Objects related to the subsoil use right include the following:

- (i) Shares (participation interest) in a subsoil user,
- (ii) Shares (participation interest) in a legal entity that has an opportunity to determine directly and (or) indirectly, and (or) influence decisions, adopted by such subsoil user, provided that the principal activity of such legal entity is related to subsoil use in Kazakhstan;
- (iii) Other securities confirming the ownership or convertible to shares of legal entities indicated in (i) or (ii).

The subsoil use right and (or) objects related to the subsoil use right can be transferred through:

- Paid or free of charge alienation;
- contribution to the charter capital of another legal entity;
- enforced collection of pledged subsoil use rights;
- other ways (privatisation, bankruptcy proceedings, etc.).

Currently the draft Code on Subsoil and Subsoil Use is under discussion with the business communities of Kazakhstan.







## 7.5 Transfer of the Subsoil Use Right Restrictions

### *State Priority Right*

The state has a priority right on alienation of a subsoil use right (or its part) and (or) objects related to the subsoil use right, only with respect to subsoil use areas or deposits of strategic significance.

A legal entity or a person intending to alienate the subsoil use right and (or) objects related to the subsoil use right related to such strategic area or deposit shall submit an application on alienation of its right to the competent authority. The competent authority on behalf of the Government makes a decision to exercise the state priority right and purchase the right or object or waive the state priority right and issues a waiver.

### *Permission for alienation of the subsoil use right*

Conclusion of a transaction on transfer of a subsoil use right (or its part) and (or) objects related to the subsoil use right requires permission from the relevant state authority.

A legal entity or a person intending to alienate the subsoil use right and (or) objects related to the subsoil use right shall submit an application to issue a permit for such transfer to the competent authority or to the local executive authorities if alienation is related to common mineral resources. The competent authority or local executive authorities give the permission or rejects the application. The permission is valid for six months and may be extended for another six months. Rejection may be challenged in a court.

In practice waiver of state priority rights and permission for alienation are requested jointly.

Waiver of state priority right and permission for alienation of the subsoil use right and (or) objects related to the subsoil use right are not required in the following cases:

- transactions involving alienation of shares and other securities circulating on an organised securities market;
- transactions between legal entities, which are owned, directly or indirectly, by the same person at least 99% provided that the acquirer is not registered in a tax-haven;
- transfer to a subsidiary, which is owned, directly or indirectly, at least 99% by the subsoil user provided that such subsidiary is not registered in a tax-haven
- transfer of less than 0.1 % of participation interest (shares).

## 7.6 Participation of the State

Pursuant to the Constitution, the state owns all subsoil resources. The state closely manages subsoil resources and is also heavily involved in mining and oil and gas industry through national holding companies (e.g. KazAtomProm in the uranium sector, Tau-Ken Samruk in other mining sectors, NC

KazMunaiGas and KazMunaiGas EP in oil and gas projects). As a result, such national holding companies establish joint ventures with international companies.

The Government has established a list of subsoil areas in which a national company must have a participatory interest.







## 7.6 Local Content

A local content requirement is obligatory for generally every subsoil user. The definition of local content is specified in the Subsoil Use Law and applies to local content in goods, services/works and personnel. Each subsoil use contract contains specified percentages of local content.

Non-compliance with local content requirement may lead to fines and even termination of the subsoil use contract. Following Kazakhstan's accession to the WTO, local content requirement will be lifted gradually.

### Local content in goods

Local content restrictions for procurement of goods and requirement to support local producers will no longer apply to newly concluded subsoil use contracts.

Any subsoil use contracts signed before 1 January 2015 will be reassessed and restrictions will be removed by 2021.

### Local content in works and services

Local content in works and services is a share of total annual payments under all procurement contracts that were paid to Kazakhstan producers of works and services less any sums that was paid to non-local subcontractors.

Kazakhstan producers of works and services are individual entrepreneurs or legal entities incorporated in Kazakhstan employing at least 95% local personnel. Managers and professionals transferred to Kazakhstan based on an intercorporate transfer will not count towards the local personnel ratio.

The number of managers and professionals employed in Kazakhstan under an intercorporate transfer should not exceed 25% and from January 2022 - 50% of the total number of managers and experts in each category.

The Local content requirement for procurement of works and

services in newly signed subsoil use contracts shall not exceed 50%.

Contracts signed from 2011 to date will be re-assessed in the next five years to bring them in line with WTO requirements, local content requirement for procured works and services will be reduced to 50%.

## 7.8 Procurement Requirements

Subsoil users are subject to strict procurement regulations.

Purchase of goods, works and services that are used in subsoil use operations is carried out by one of the following methods:

- 1) open tender/auction;
- 2) from a single source;
- 3) request for a price quotation;
- 4) the e-procurement system;
- 5) commodity exchanges.

Subsoil use procurement rules do not apply to:

- 1) subsoil users performing operations for exploration and production of common mineral resources, underground water and therapeutic mud;
- 2) subsoil users purchasing goods, works and services in accordance with the Law "On State Procurement";
- 3) legal entities - (subsoil users), which are 50% or more directly or indirectly owned by the national management holding company.

All goods, works and services procured for direct use in subsoil use operations and as specified in subsoil use contract related activities, are reflected in annual, mid-term and long-term procurement programs.

## 8. Real estate and agriculture

### 8.1 Immovable property

Rights related to a land plot and other immovable property are primarily regulated by the Land Code, the Civil Code and the Law of State Registration of the Rights to Immovable Property.

Immovable property includes land plots, buildings, constructions and other property connected with the land.

#### *Registration*

The following rights and encumbrances to immovable property are subject to state registration: (a) ownership right; (b) land use right (lease) for a term, exceeding one year; (c) lease of real estate for a term exceeding one year; (d) trust management right; (e) pledge; and (f) any other rights (encumbrances) on immovable property. These rights become valid and come into force from the moment of state registration.

State registration is under the Ministry of Justice. The state registration authority maintains a cadastral register of rights which contains information in relation to existing or terminated rights to the immovable property, identification characteristics of the immovable property and its owner.

Information from the cadastral register may be disclosed only on request of the owner of immovable property or authorised state authorities.

#### *Ownership right and documentation*

The Ownership right to the land plot and ownership right to constructions located on the land plot are inseparable and cannot exist without each other. Thus, when ownership right to a construction is acquired, ownership right to the land plot, located under the construction is automatically acquired. Nevertheless, ownership right to a construction and ownership right to the land plot are registered separately.

The title document to immovable property is normally a sale and purchase agreement or another document purporting to transfer the title to the immovable property (e.g. a court order, a transfer deed, a decision of the local municipality, etc.). A building or construction, located on the land plot should have a technical passport, which contains technical and identification characteristics of the object, which are necessary for maintaining the cadastral register.

Each land plot has a designated purpose, which is identified in the act for right on private property (land use right) to the land plot. Such designated purpose depends on category of land (land of population centres, agricultural land, etc.). According to the Land Code, a land plot should be used in accordance with its designation purpose.

Newly buildings or constructions should be used in accordance with their purpose. Commissioning of an industrial building is



conducted by the state acceptance committee, which includes representatives of the contractor, primary contractor, architecture and town planning authorities and other state authorities. An act of acceptance should be registered with the Ministry of Justice. From the moment of such registration, this act becomes the document, identifying ownership right to the commissioned object. Use of a non-commissioned object is prohibited.

### 8.2 Ownership restrictions in respect of immovable property

Foreign legal entities have the right to own industrial and residential property with certain exceptions. Foreign citizens who have Kazakhstan permanent residence can also own industrial and residential properties. Kazakhstan legal entities (including those owned by foreigners) are allowed to own immovable property. Foreigners are prohibited to own farm land, land for maintenance of forestry and land in a Kazakhstan frontier zone.

Foreign investors are permitted to operate in the agricultural sector. However, foreign citizens, foreign legal entities, as well as Kazakhstan legal entities, where more than 50% of the charter capital belongs to foreign persons, cannot own agricultural land plots. They can only lease agricultural land plots for a period not exceeding 25 years. The lease period for privately owned legal entities where more than 50% of the charter capital belongs to Kazakhstan individuals or legal entities shall not exceed 49 years.

Legislation prohibits subleasing of agricultural land, except for using it as a pledge or contribution to the charter capital of a legal entity.

As a competition measure, Kazakhstan may limit the size of agricultural land that may be leased/owned by an entity or individual.

## 9. Other regulatory matters

### 9.1 Antitrust Regulation

There are two main aspects of antitrust regulation: (i) regulation of natural monopolies and regulated markets , and (ii) protection of competition.

#### *Natural monopolies*

The concept of “natural monopoly” embraces companies carrying out certain activities in market where due to economical and other reasons it is not possible to create a competitive market.

Legislation also provides for the concept of “subjects of the regulated markets” meaning individual entrepreneurs and legal entities which are included into the State Registrar of Dominant and Monopolistic Entities.

Legislation on natural monopolies and regulated markets establishes (i) state control and regulation of the activities of natural monopolists (e.g. by means of restriction of certain types of activities for natural monopolists), and state regulation over prices and tariffs on goods and services of natural monopolists and subjects of the regulated markets.

The Committee for Regulation of Natural Monopolies and Competition Protection is responsible for control and

supervision of the activities of natural monopolists and subjects of the regulated markets.

#### *Competition protection*

On 1 January 2016, a new Entrepreneurial Code came into effect which regulates (i) state support of competition protection; (ii) restrictions on unfair competition activities, anti-competitive agreements and/or actions; and (iii) state control over economic concentration.

The following activities are considered as monopolistic activities and are restricted:

- anti-competitive agreements,
- anti-competitive concerted actions and
- abuse of dominant and monopolistic position.

Legislation also prohibits unfair competition such as, unauthorised use of means of individualisation and copyright objects, discrediting a market player, unfair advertisement and illegal use of goods of the other manufacturer, etc. The Entrepreneurial Code provides for an exhaustive list of actions, which are regarded as unfair competition, and describes each type of actions.





## 9.2 Consents

### Economic concentration

Legislation considers the transactions described below as “economic concentration” and requires obtaining prior consent/notification of the Committee for Regulation of Natural Monopolies and Competition Protection of the Ministry of National Economy of Kazakhstan.

*Economic concentration, which may require obtaining prior consent:*

1. reorganisation of a company by way of merger or accession;
2. direct or indirect acquisition of more than 50% of the voting shares, participation interest or units in the charter capital of a legal entity if prior to the transaction the buyer held 50% or less of shares/participation interest; this requirement does not apply to the founders of legal entity during its establishment.
3. receipt of ownership right or the right to use or possess over the fixed assets and/or immaterial assets of another entity if the price of these assets is more than 10% of the total balance sheet value of fixed assets and immaterial assets;

*Economic concentration, which may require notification:*

4. 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 executive body; and
5. participation of an individual in the executive bodies, boards of directors, supervisory boards or other management bodies of two or more entities.

Obtaining prior consent/notification is required if:

- the total net value of assets of the reorganized entity or buyer (including its group), or legal entity, shares (participation interest) of which will be acquired exceeds 10,000,000 MCI (approximately USD 60,600,000) for the last financial year; or
- the total volume of realisation of goods, work, services of the reorganized entity or buyer (including its group), or legal entity, shares (participation interest) of which will be acquired exceeds 10,000,000 MCI (approximately USD 60,600,000) for the last financial year; or
- one of the parties has a dominant or a monopolistic position in the Kazakh market.

The consent/notification of the Committee for Regulation of Natural Monopolies and Competition Protection is not required if the transaction is within one group.

The provisions of the Entrepreneurial code related to obtaining consent/notification for conduction of economic concentration have an extraterritorial effect and apply to transactions performed outside of Kazakhstan but only if such transactions shall:

- have direct or indirect impact on Kazakhstan assets (including participation interests, shares) and property rights of Kazakhstan legal entities; or
- restrict competition in Kazakhstan.

Please note that economic concentration carried on without

antimonopoly consent/notification may be considered by the courts as invalid upon a lawsuit of the Committee for Regulation of Natural Monopolies and Competition Protection.

### Strategic assets

A strategic asset is a property, which has social-economic significance for Kazakhstan sustainable development, and its possession, use, or disposal will influence national security. The Government approved a list of strategic assets. The state or private entities may own strategic assets. However, the state has a pre-emptive right to purchase strategic assets. Alienation or encumbrance of strategic assets in favour of third parties requires consent of the Government.

### Telecommunications

Telecommunication services are subject to mandatory licensing. Use of radio frequencies is also subject to certain permits which are valid for one year.

The Communication Committee of the Ministry of Investment and Development (Communication Committee) issues the licences. The Communication 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. Frequencies for TV and radio broadcasting can be allocated on the basis of a tender. There are certain restrictions for foreigners or foreign legal entities in telecommunications sector:

- they may not own (directly or indirectly) or control more than 20% of shares in mass media in Kazakhstan or carry out any activity in this sphere;
- they may not own (directly or indirectly) more than 49% of shares in operator of a long-distance and/or international telecommunication which owns land communication lines without approval of the Government;
- acquisition of more than 10% of shares of a legal entity which owns and/or manages and/or operates domestic or international communication lines requires the consent of the competent authority;
- they may not manage or operate any trunk lines.

## 9.3 Intellectual Property

### Overview of IP rights

Intellectual property is the exclusive right of an individual or company to the results of intellectually creative activities and means of individualisation.

There are two objects of intellectual property law:

1. Results of intellectual creative activity which include:
  - works of science, literature and art;
  - performances, staging, phonograms and transmission of broadcasting and cable broadcasting;
  - inventions, utility models, industrial designs;

- inventions, utility models, industrial designs;
  - selection achievements;
  - integrated microcircuit topologies;
  - undisclosed information, including trade secrets (know-how);
  - other results of intellectual creative activity.
2. Means of individualisation, which include:
- trade names;
  - trademarks (service marks);
  - appellation of origin (indication of origin) of goods;
  - other means of individualisation.

An author of the results of intellectual creative activity shall have (i) personal non-property and (ii) property rights. Personal non-property rights are not transferable but property rights can be transferred in full or partially. An owner of property right can also authorise use of objects of intellectual property.

The Ministry of Justice is the main state body that regulates the area of intellectual property. Within the Ministry, there are department of intellectual property right which is responsible for implementation of state policy and republican state enterprise “National Institute of Intellectual Property” that carries out patent expert functions, including acceptance of applications for patents and registration of trademarks.

Customs authorities also protect intellectual property rights by maintaining the register of goods infringing IP rights and fighting with counterfeited goods.

### **Registration requirements**

In order to enjoy protection in Kazakhstan the objects of IP rights (trademarks, patents) shall be registered. Additionally license agreements, which authorise application of objects of IP rights indicated above shall also be registered. Kazakhstan has a principle of “first to file”, is not “first to use”. Generally, it means that the first person that filed an application to register a trademark enjoys protection.

### **Copyrights and Related Rights**

The Copyright Law covers works of science, literature and art (copyrights), as well as staging, performances, phonograms, and TV and radio broadcasting organizations (related rights). Computer programs and databases are protected as objects of copyright law. Copyright applies to published and unpublished work that exist in some material form and protection is granted to an author by virtue of its creation without registration or other formalities. An author can transfer rights to use by copyright agreement. A Copyright agreement is not subject to registration, but has to be in writing and contains some mandatory provisions set by the legislation.

### **Patents**

The Patent Law covers inventions, utility models and industrial designs, while Selection Achievements Law covers selection achievements.

A Patent gives protection to these objects and confirms

priority, inventorship/authorship and exclusive right.

Patent protection is given to

- an invention if it is new, is inventive and is industrially applicable;
- an utility model if it is new and is industrially applicable;
- an industrial design if it is new and original;
- a selection achievement if it is new, distinct, homogeneous and stable.

A Patent for invention, utility model, industrial design or selection achievement is given for different period depending on the type of patented object. Patent owners can assign patents to individuals or legal entities. The Assignment or license agreement should be registered with the Ministry of Justice to be valid.

### **Trademarks, Service Marks and Appellation of Origin**

Protection of trademarks, service marks and appellation of origin is granted based on registration with the Ministry of Justice, as well as without registration by virtue of international treaties of Kazakhstan.

The registration of trademarks is valid for ten years from the date of application and can be prolonged for another ten years. Registration of appellation of origin of goods is valid for an indefinite period provided that goods produced in the indicated territory preserve their specific quality. The right to use appellation of origin is valid for ten years and can be prolonged for another ten years.

The assignments or licenses for trademarks and service marks must be registered with the Ministry of Justice to be valid. Trademarks and corresponding license/assignment agreements that are not registered should not enjoy protection in Kazakhstan.

Foreign applicants (individuals or legal entities) may apply for registration of trademarks and license agreements only through a patent attorney.

## **9.4 Consumer Protection**

Consumers are protected by the Civil Code, the Law On Protection of Consumers' Rights and other normative legal acts.

The Civil Code sets general regulations concerning consumers' rights and protection. The Law on Protection of Consumers' Rights governs the relationship between the consumer and vendor or supplier of goods and services on a more specific basis.

Consumers have the following primary rights, namely to:

- freely purchase commodities (goods, works, services);
- purchase safe goods, works and services;
- enjoy high quality and safety of goods, works and services;
- obtain full and reliable information on goods;
- exchange or return of goods both proper and improper quality;
- be fully compensated for losses (damages) caused to life, health and (or) property as a result of defects of goods (works, services) as well as to be compensated for moral



- damages;
- access information in the field of consumer protection;
- join public associations of consumers;
- have the rights and legitimate interests protected.

Sellers and manufacturers are obliged to provide goods in appropriate quality, presenting no defects and no harm for health and in the agreed quantity. They may not restrict consumer rights guaranteed and protected by the law. In the event of failure to comply with the provision of the law, the parties are subject to civil and administrative liability.

The choice of methods for protection of rights is the prerogative of the consumer. Depending on the situation, the consumer has the right to demand:

- 1) proportionate reduction of the purchase price;
- 2) free elimination of defects in the goods;
- 3) reimbursement of expenses for elimination of defects in the goods;
- 4) replacement by goods with a similar brand (model, article);
- 5) replacement of the same product to another brand (model, article) with the relevant recalculation of the purchase price; and
- 6) termination of the contract and return of the money paid for the goods.

## 9.5 Permit regulation

Under Kazakhstan permit law regulations, all permit documents are categorized on the basis of the level of danger of activities/operation to be carried out:

- 1) licenses – permits for performing activities/operations associated with high level of danger;
- 2) permits – all permits for performing activities/operations associated with a medium level of danger;
- 3) notifications – written notifications submitted to government authorities for starting or closing of business/operations associated with low level of danger.

As of 1 January 2017, Kazakhstan permit law contains a complete list of licenses (79), permits (205) and notifications

(53) required to be obtained or submitted, which significantly decreased in comparison with previous years. All licenses required are divided into certain business areas such as mining, oil&gas, telecommunication, space, etc.

All required licenses and permits should be obtained before starting the business activity subject to licensing or permitting. A failure to obtain a required permit document leads to different types of liability and penalties imposed on the legal entities. Therefore, foreign entities should consider whether the contemplated type of activity requires preliminary obtainment of license or permit beforehand.

### Licensing of certain business activities and operations

In general, licenses and permits are issued within 15 business days starting from the date of submission of all required documents to the competent government authority. However, if the applicant does not fully meet the qualification requirements or omits to provide any required document or information, the government authority may refuse to issue a permit document. In this case, document confirming a payment for license/permit fee will be returned to the applicant.

From practice perspective, the process of licensing/permitting application may vary from one to six months, depending on the complexity of the requested types of licensed activities. However, Kazakhstan permit law does not restrict the applicant to apply for license/permit again and, therefore, it is possible to file the application an unlimited number of times.

There are special qualification requirements for legal entities engaged in design and construction activities. These requirements vary from the category of the license and depend on the complexity of the designing/construction objects (e.g., production facilities, train stations, multi-floor buildings). Based on work experience of the applicant, which is generally required to be more than 5 or 10 years for the second and the first category respectively, the applicant may apply for license of the certain category (first, second and third) which will allow the licensee to construct/design an object of certain complexity and subcontract other companies, holding the



relevant licenses.

From practical perspective, foreign legal entities applying for first and second category licenses should recognize its work experience in Kazakhstan by way of providing the similar permit document which allows the applicant to perform design/construction activity abroad and supporting documents confirming completeness of the projects such applicant was engaged to. Taking into account that in some states it is not required to obtain a similar permit document for construction/design activity and there are no work experience confirming documents (e.g. acts of completeness, acts of acceptance of works/services), certain foreign legal entities may face practical problems of recognizing its relevant work experience required to obtain a first or second category license.

It also should be noted that work experience will be recognized only if the foreign company has a presence in Kazakhstan in form of branch, which is considered as its subdivision, while legal presence in form of LLP or JSC is considered as a separate legal entity with no work experience recognized for an applicant as its parent company.

Kazakhstan law also sets a list of goods import/export of which is subject to licensing. Based on the nature of business

transaction on export/import of goods, the licenses are divided into general, exclusive and one-time license which are granted within 30 days after the date when the required documents are submitted to the competent governmental authority.

### **Permits**

Permit regulations contain a broad list of activities/operations which require to obtain a relevant permit which can also be defined as certificate, accreditation, etc. Each type of required permit has its own permit requirements and timelines. Such requirements and application procedure is specified in certain law regulations (e.g., currency law, immigration law, safety, etc).

### **Notifications**

There is a list of activities (e.g., notary activity), works (e.g., starting of construction works) and operations (e.g., submission of tax reports) that require preliminary submission of written notification to the competent government authority within established period of time. Receipt of such notification by the state authority confirm the compliance of the applicant with aforementioned requirement.



# 10. Tax system and administration

## 10.1 Tax System

Tax service bodies comprise:

- the authorized state body – the State Revenue Committee of the Ministry of Finance;
- other tax offices, which include regional and oblast State Revenue departments, State Revenue departments of Almaty and Astana and State Revenue for districts.

## 10.2 Main Taxes

The main taxes include:

- Corporate Income Tax (“CIT”), including branch profits tax, capital gains tax and withholding taxes;
- Individual Income Tax (“IIT”);
- Value-Added Tax (“VAT”);
- Excise Tax;
- Rent tax on exported crude oil and natural gas liquids;
- Taxes and special payments of subsurface users;
- Social tax;
- Land tax;
- Tax on transport vehicles; and
- Property tax.

## 10.3 Legislative Framework

The Tax Code:

imposes national and local taxes and other payments (duties and fees);  
regulates the administration of taxes;

The inclusion of tax matters, including the granting of exemptions or privileges, in other legislation is specifically prohibited.

The Code on Administrative Violations deals with administrative fines for non-compliance with tax regulations. Kazakhstan applies the concept of criminal liability with respect to taxes. A criminal violation may occur when the tax misreported approximately USD 124,035.

## 10.4 Income Tax

### Classes of Taxpayer

Resident legal entities and non-resident legal entities with a Kazakhstan permanent establishment are recognized as corporate income taxpayers. Non-residents that receive income from Kazakhstan sources without creating a permanent establishment are generally subject to withholding taxes.

### Concepts of Income Tax

The rate of CIT is 20% applied to a taxable base. This is computed as aggregate income less allowed deductions. Corporate income tax is payable via monthly installments (advance payments).

Foreign and local dividends received are exempt from taxation.

## 10.5 CFC provisions

Under “the controlled foreign companies” (“CFC”) regime a Kazakhstan tax resident may be taxed on a portion of the undistributed profits of certain non-resident companies registered in a country with favorable taxation and in which such Kazakhstan tax resident has an interest. There is a “black- list” of jurisdictions for which CFC rules apply.

## 10.6 Tax Treaties

Kazakhstan has effective double tax treaties with approximately 51 countries (refer Appendix C).

## 10.7 Tax Returns and Payments

Tax returns are prepared by the taxpayer, tax agent or their representatives. Tax returns should be in paper or electronic format in Kazakh or Russian.

## 10.8 Assessments

On completion of a tax audit, the authorities issue a tax audit act. If no violation is discovered, a note is made in the tax audit act.

On the basis of the tax audit act, the tax authorities issue a “notification” on the assessed amounts of taxes and penalty interest.

## 10.9 Appeals

Taxpayers have the right to appeal to a higher level tax body or to the court.

## ***10.10 Withholding Taxes including Capital Gains***

Non-residents without a Kazakhstan PE are subject to withholding tax on Kazakhstan-sourced income. This is broadly defined to include any income from activity in Kazakhstan.

Interest, royalties and dividends are subject to 15% (20% if paid to countries registered in “black-listed” jurisdictions) withholding tax, reduced under most double tax treaties provided beneficial ownership and other administrative requirements (tax residence certificate, etc.) are met. Other Kazakhstan-sourced income (including income from services and management fees) is taxed at 20%, unless a double tax treaty provides otherwise.

Kazakhstan applies an extra-territorial capital gains tax regime i.e. if a non-resident sells its shares in a Kazakhstan legal entity to another non-resident it may be subject to taxation in Kazakhstan:

Capital gains realized by a non-resident on the sale of a Kazakhstan subsidiary not involved in subsurface use activities are exempt from Kazakhstan taxation provided certain conditions are met;

Disposal of shares in Kazakhstan subsidiaries involved in subsurface use activities is subject to 15% Kazakhstan withholding tax on capital gains and 20% in certain cases.

There is an exemption from capital gains taxation of shares listed on domestic and foreign stock exchanges and sold via the open auction method.

Income realized by non-residents registered in a “black-listed” jurisdiction is subject to specific tax rules. The withholding tax rate is usually 20% unless a double tax treaty provides otherwise.





# 11. Taxation of corporations

## 11.1 Corporate Tax System

CIT applies to the taxable income of Kazakhstan legal entities and branches of foreign legal entities:

- Kazakhstan branches of foreign legal entities are taxed on their Kazakhstan-sourced income. The after-tax profit of branches is subject to 15% branch profits tax, potentially reduced to 5% or 10% under a double tax treaty.
- Kazakhstan legal entities are taxed on their worldwide income.

To qualify for the above-mentioned exemptions the entity (1) shall be newly established, the amount of investment should exceed 2 mln MCI (approximately USD 12,403,509), (2) investment shall be made in priority investment projects and (3) aggregate annual income from investment projects shall be 90%.

Specific requirements must be met by companies to enjoy tax incentives in a SEZ. Generally, there is no CIT, property tax and land tax in a SEZ.

(Refer to Section 3.2 for more information **on special economic zones**)

## 11.2 Incentives

Tax legislation establishes:

- investment incentives;
- tax holidays for special economic zones.

**Investment incentives** are available only to certain Kazakhstan legal entities. Generally, the investment incentives allow an immediate tax deduction for the costs of the fixed assets either (i) firstly put into operation in Kazakhstan and their reconstruction and modernization expenses or (ii) within the first three years of use.

Incentives are granted under an investment contract with the Government. The focus is priority sectors of the economy, as determined by the Government.

Organizations implementing investment priority projects have a right to use certain preferences as follows:

- reduction of CIT by 100%;
- application of 0% coefficient to the rates of land tax;
- calculation of property tax at 0% to the tax base.

## 11.3 Taxable Income

Aggregate annual income comprises all income received, whether in cash or in kind, including:

- sales income;
- capital gains;
- passive income, including interest but excluding certain types of dividends;
- income from derivatives;
- certain deemed income;
- income from carrying out joint ventures;
- winnings (any type of income in cash and in kind received from contests, lotteries, etc.);
- bad and doubtful debts recovered.



## 11.4 Deductibility of Expenses

Expenses associated with the earning of income are deductible. Certain expenses are deductible within prescribed limits.

**Business Trip Expenses.** Accommodation and travel expenses (including costs of transport, accommodation, reservations, entry visa and per diems) reimbursed by the employer are deductible.

**Interest Expense.** Interest paid to third parties is fully deductible. Deduction of interest paid to related parties or to unrelated parties under related parties' guarantees or to parties registered in a "black-listed" jurisdiction is subject to thin capitalization rule. In order to deduct interest in full, debt- to- equity ratio should be 7:1 for financial institutions and 4:1 for all other entities.

**Doubtful Debts.** Receivables from Kazakhstan legal entities, individual entrepreneurs and non-residents operating through a PE not paid within three years are recognized as doubtful. The debt claims may be deducted in full, provided that (i) these receivables were reflected in the books and (ii) appropriate supporting documents are available.

**Depreciation.** Tax depreciation is calculated using the declining balance method. For depreciation purposes assets must be allocated to one of four tax groups.

Depreciation for each group is based on the relevant depreciation rates, but not higher than maximum rates, to the tax value at the end of the tax period. The maximum depreciation rates vary from 10% to 40%.

For fixed assets introduced into operations in Kazakhstan for the first time a subsurface user can apply double depreciation rates. They apply only for the first tax period provided the fixed assets are used for generation of income for at least three years. During the first tax period, these assets should be accounted for in a separate group.

## 11.5 Related Party Transactions

The Transfer Pricing Law was introduced in 2009. Both the customs and the tax authorities have the right to monitor and adjust prices used in cross-border transactions when prices differ from market prices even if participants are unrelated. A re-assessed liability will include taxes, duties, penalty interest and fines. TP rules apply to the following:

- international commercial transactions;
- domestic transactions that directly relate to international commercial operations.

Under its monitoring procedures for international transactions, the Government has issued a list of goods and services subject to TP control. This list includes crude oil and petroleum products. However, TP also applies to goods and services not specifically included in the list.

## 11.6 Foreign Exchange

In principle, for both accounting and tax purposes, assets and liabilities in a foreign currency must be translated into KZT at the official exchange rate of the National Bank on the date on which the transaction is carried out.

The tax treatment of foreign exchange gains/losses generally follows the financial accounting principles.

## 11.7 Tax Computations

CIT is payable in equal advance installments, by the 25th of each month. Advance installments are based on estimated income for the year, which must be declared not later than 20 January of the reporting year. Certain entities are exempt from advance installments.

If actual CIT calculated is less than advance payments made, the excess may be offset against other taxes or non-tax liabilities to the state (including fines and penalties), or against future tax payments. In the absence of any liabilities, the taxpayer may apply for a cash refund.

Tax losses may be carried forward for up to 10 years.

## 11.8 Other Taxes

**Excise Tax.** Excise duties apply to the importation and sale of all types of spirits, alcohol, tobacco, petrol/gasoline (excluding aviation fuel), diesel, vehicles, crude oil and natural gas condensate. Excise duty rates vary and are subject to frequent change.

**Property Tax.** Property tax is calculated at a rate of 1.5% of the average annual book value of taxable items as determined in accounting. Certain taxpayers enjoy reduced rates. Property tax is paid in four installments during the reporting year with the final payment (the actual tax) by 10 April. The reporting requirements include submission of (i) the calculation of current year payments by 15 February of the current tax period; and (ii) Property Tax Declaration by 31 March of the year following the reporting year.

**Land Tax.** The rate depends on the area of land plot and the quality rating set by the Government. Rates also differ for legal entities and individuals. Land tax is paid in four installments during the reporting year with the final to be made by 10 April. The reporting requirements are the same as for property tax.

**Vehicle Tax.** The rate depends on the vehicle type and engine size. Vehicle tax payable by legal entities is paid annually not later than 5 July of the current tax period. The reporting requirements include submission of (i) the calculation of current year payments by 5 July; and (ii) Vehicle Tax

Declaration by 31 March of the year following the reporting year.

**Environmental Tax.** The levy for pollution of the environment depends on the industry type and the region. Environmental levy rates are based on the monthly calculation index established for the financial year and may be increased by local authorities.

## 11.9 Taxation of Business Entities

Kazakhstan limited liability partnerships are taxed as corporations. Branches and representative offices of foreign legal entities may be taxed as taxpayers without creation of a separate legal entity. Income received by each partner in a consortium and entities operating under joint operation agreements is assessed separately based on the participant's share and at the participant level. (The Consortium itself is not a taxpayer.) Income and expenses flow through to the participant entities. Kazakhstan does not have tax consolidation provisions.

### 11.10 Subsurface Taxation

**Tax Regime.** The subsurface users compute their tax obligations based on the tax legislation in effect when tax obligations arise.

**Special Taxes.** All subsurface users are required to pay special taxes and other obligatory payments. These include: signature and commercial discovery bonuses, payment for historical costs, mineral extraction tax, excess profits tax, rent tax on exported crude oil and excise taxes. Although the list of special payments and taxes applicable is the same for all subsurface users, the economics of a project usually determine amounts of applicable bonuses. Payment for historical costs is to recover costs incurred by the Government for exploration and development of mineral resources.

**Mineral Extraction Tax.** MET rates apply to the value of minerals produced, where value is based on the world price. The rates for crude oil and gas condensate range from 5% to 18% and for natural gas the rates range from 0,5% to 1,5%. The rates for other minerals vary depending on the type of mineral. Rates for hydrocarbons can be reduced by 50% if they are supplied to domestic refineries in a sale/purchase or tolling agreement.

**Excess Profits Tax.** Subsurface users are liable to pay excess profits tax on net income for the reporting period. Excess profits tax applies to net income exceeding 25% of specific deductions. In addition to usual corporate deductions, the cost of fixed assets and capital repairs is deductible for excess profit tax purposes. Excess profits tax is based on a progressive scale where the maximum rate of 60% applies to net income exceeding 70% of deductions.

**Rent Tax.** Rent tax applies to entities selling crude oil and gas condensate for export (except for certain subsurface users that concluded production sharing agreements prior to 1 January 2009). It also applies to exporters of coal. Similar to MET, the value for crude oil and gas condensate is based on "the world price" regardless of quality discounts and transport costs. The value for coal is based on the actual selling price. Rent tax rates for crude oil and gas condensate vary from 7% if the market price is above USD 40/barrel, to 32% if the market price exceeds USD 180/barrel. The rent tax rate for export of coal is 2.1%.

**Special Provisions.** On transfer of hydrocarbons for processing based on a tolling agreement or transfer of minerals for primary processing within the same or separate legal entity, revenue for CIT and EPT purposes is determined in a specific way. Revenue is based on production cost, including primary processing, determined under IFRS increased by a 20%. The same approach is applied to define the taxable base for the mineral extraction tax in similar cases.

**Deductions.** Exploration and development costs incurred by subsurface users prior to commercial production are deductible through depreciation charges. These expenses include geological studies, geological prospecting, exploration, appraisal and development of natural resources, general and administrative costs, signature and commercial discovery bonus payments, expenditures for the purchase of fixed and intangible assets and other tax deductible expenses, except for mineral selling expenses. These expenditures form a separate group with a maximum depreciation rate of 25%. This pool of capital expenses accumulated during the Exploration Contract is carried over to the Production Contract for further depreciation for CIT purposes.

The same depreciation procedure applies to expenditures for the acquisition of intangible assets incurred by a subsurface user in relation to the acquisition of subsurface rights.

**Ring Fencing.** Ring fencing provisions exist. Each subsurface use contract is taxed separately.

**Stability of Tax Regime.** PSAs were used prior to 2009 for major oil and gas fields such as Kashagan, Karachaganak and certain offshore projects in the Kazakhstan sector of the Caspian Sea. The tax stability clauses of **PSAs** are applicable to contracts signed prior to 1 January 2009 and contracts signed by the President. However, the tax authorities encourage subsurface users with PSAs to move from the stabilized tax regime to the regime of EPT contracts.



# 12. Taxation of individuals

## 12.1 Individual Income Tax

### **Taxpayers**

All individuals having taxable income.

Income subject to individual income tax is split between:

1. income taxable at the source of payment:
  - income of an employee;
  - income of an individual from a tax agent;
  - dividends, interest and winnings;
  - pension payments from pension funds;
  - income from insurance agreements;
  - scholarships.
2. income not taxable at the source of payment:
  - property income;
  - taxable income of an individual entrepreneur;
  - income of advocates and private notaries;
  - other income.

### **Scope of Tax**

Non-residents are taxed on their Kazakhstan-sourced income only. Any income received for the performance of duties in Kazakhstan irrespective of where the income is paid is considered to be Kazakhstan-sourced, e.g. paid by a foreign company, including various allowances/in-kind benefits (e.g. housing, schooling, other assignment related costs, etc.).

Tax residents are subject to IIT on their worldwide income.

Individuals are regarded as Kazakhstan tax residents if at least one of the following criteria is met:

- Physical presence: individuals who spend 183 calendar days or more in Kazakhstan in any consecutive twelve month period ending in the reporting tax year;

The 183 days apply irrespective of the nature of the stay (work, holidays). Each day or part day of physical presence counts.

- Center of vital interest: individuals who spend less than 183 calendar days in Kazakhstan, but if all the criteria below are met:
  1. The individual holds Kazakhstan citizenship or a residence permit;
  2. Family and/or close relatives are living in Kazakhstan;
  3. The individual and/or his family members owns real estate in Kazakhstan, which is available to him/them to stay in Kazakhstan at any time.

Immigration status does not directly determine tax status.

### **Tax Rates**

Individual income is levied at the rate of 10%, except for dividends which are taxed at 5%. Certain income of

non-residents may be subject to a 20% IIT.

### **Double Tax Treaties**

If a foreigner becomes a Kazakhstan tax resident and remains tax resident in another country under its domestic tax law, a relevant DTT shall determine tax residency and whether the exemptions under the DTT may be applied (Appendix C).

## 12.2 Employment income

### **Employee's gross income**

An employee's income (irrespective of residency status) subject to taxation, is any kind of income received from an employer in cash or in kind e.g. accommodation, benefits, compensation, company car, reimbursable business trip expenses in excess of statutory limits.

### **Deductions**

There are several tax deductions. However, most are insignificant and are applied by Kazakhstan employers. These deductions include:

- the Minimum Monthly Wage established by the State on an annual basis;
- Obligatory and voluntary pension contributions;
- insurance premiums payable by individuals under accumulative insurance agreements;
- interest on a housing loan provided by a housing construction savings banks;
- Expenses on medical services with certain limitations.

The deductions do not apply to tax non-residents.

### **Business Expenses**

Business expenses are not deductible for employees. An individual may claim business deductions if registered as an individual entrepreneur.

## Appendix C

List of all effective double tax treaties and withholding taxes

Withholding Tax Rates Between Kazakhstan and Treaty Countries

(The letters in parenthesis refer to the notes below)			
Recipient	Dividends	Interest	Royalties
<b>Nontreaty</b>	15	15	15
Treaty:			
<b>Armenia</b>	10	10	10
<b>Austria</b>	5/15 (4)	10	10
<b>Azerbaijan</b>	10	10	10
<b>Belarus</b>	15	10	15
<b>Belgium</b>	5/15 (4)	10	10
<b>Bulgaria</b>	10	10	10
<b>Canada</b>	5/15 (1)	10	10
<b>China</b>	10	10	10
<b>Czech Republic</b>	10	10	10
<b>Estonia</b>	5/15 (2)	10	15
<b>Finland</b>	5/15 (1)	10	10
<b>France</b>	5/15 (10)	10	10
<b>Georgia</b>	10	10	10
<b>Germany</b>	5/15 (2)	10	10
<b>Hungary</b>	5/15 (9)	10	10
<b>India</b>	10	10	10
<b>Iran</b>	5/15 (6)	10	10
<b>Italy</b>	5/15 (5)	10	10
<b>Japan</b>	5/15 (1)	10	10
<b>Korea</b>	5/15 (1)	10	10
<b>Kyrgyzstan</b>	10	10	10
<b>Latvia</b>	5/15 (2)	10	10
<b>Lithuania</b>	5/15 (2)	10	10
<b>Luxembourg</b>	5/15 (17)	10	10
<b>Macedonia</b>	5/15 (2)	10	10
<b>Malaysia</b>	10	10	10
<b>Moldova</b>	10/15 (2)	10	10
<b>Mongolia</b>	10	10	10
<b>The Netherlands</b>	5/15 (5)	10	10
<b>Norway</b>	5/15 (12)	10	10
<b>Pakistan</b>	12.5/15 (8)	12.5	15
<b>Poland</b>	10/15 (3)	10	10
<b>Romania</b>	10	10	10
<b>Russia</b>	10	10	10
<b>Singapore</b>	5/10 (13)	10	10
<b>Slovakia</b>	10/15 (7)	10	10
<b>Spain</b>	5/15 (4)	10	10
<b>Sweden</b>	5/15 (14)	10	10
<b>Switzerland</b>	5/15 (12)	10	10
<b>Tajikistan</b>	10/15 (7)	10	10
<b>Turkey</b>	10	10	10
<b>Turkmenistan</b>	10	10	10
<b>Ukraine</b>	5/15 (15)	10	10
<b>United Arab Emirates</b>	5/15 (4)	10	10
<b>United Kingdom</b>	5/15 (1)	10	10
<b>United States</b>	5/15 (16)	10	10
<b>Uzbekistan</b>	10	10	10
<b>Vietnam</b>	5/15 (18)	10	10



Notes referring to the table:

1. 5% if the beneficial owner is a company which controls directly or indirectly at least 10% of the voting power in the company paying the dividends.
2. 5% if the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
3. 10% if the beneficial owner is a company which directly or indirectly holds at least 20% of the capital of the company paying the dividends.
4. 5% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends.
5. 5% if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the company paying the dividends.
6. 5% if the recipient is a company (excluding partnership) which holds directly at least 20% of the capital of the company paying the dividends.
7. 10% if the beneficial owner is a legal entity and directly holds not less than 30% stake in the company paying the dividends.
8. 12.5% if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the company paying the dividends.
9. 5% if the beneficial owner is a company which holds directly or indirectly at least 25% of the capital of the company paying the dividends.
10. 5% if the beneficial owner is a company which owns directly at least 10% of the capital of the company paying the dividends.
11. 5% if the beneficial owner is a company (other than a partnership) which holds at least 10% of the capital of the company paying the dividends.
12. 5% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends.
13. 5% if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.
14. 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the voting power of the company paying the dividends.
15. 5% if the beneficial owner is a company and that company owns at least 25% of the capital of the company paying the dividends.
16. 5% if the beneficial owner is a company which owns at least 10% of the voting stock of the company paying the dividends.
17. 5% if the beneficial owner is a company and that company owns at least 15% of the capital of the company paying the dividends.
18. 5% if the beneficial owner is a company which holds directly at least 70% of the voting power of the company paying the dividends.

## 12.3 Personal income

### Interest

Interest received from foreign banks is taxable. Interest received from Kazakhstan banks is exempt.

Interest on debt securities, government securities and agency bonds is also exempt.

### Dividends

Dividends are exempt if one of the following conditions is met:

1. Dividends on securities listed on KASE on the date of accrual;
2. If all the following conditions are met:
  - on the date the dividends distribution the taxpayer owns shares for more than 3 years;
  - the entity paying the dividends is not a subsurface user;
  - at the day of sale, 50% or more of the value of the assets of the issuer or of the entity which is sold is not derived from property of a subsurface user.

### Capital gains

Capital gains on disposal of the following securities are exempt:

- government securities;
- agency bonds;
- securities listed on KASE on the day of disposal;
- if all the following conditions are met:
  - On the date of sale the taxpayer owns the shares for more than 3 years;
  - The legal entity which shares are sold, is not a subsurface user;
  - at the day of sale, 50% or more of the value of the assets of the issuer or of the entity which is sold is not derived from property of a subsurface user.

### Sale of property

Income from the sale of physical property in Kazakhstan and owned for at least 1 year is exempt from taxation. There are no reporting requirements.



## 12.4 Other Taxes

### **Social Tax**

Social tax is paid by employers for their employees (local and expatriates) at 11% of gross remuneration less Obligatory Pension Contributions.

### **Social Insurance Contributions**

Social insurance contributions are paid by employers at 5% of gross remuneration less Obligatory Pension Contributions. The contributions are capped at 5% of 10 minimum monthly wage (MMW) per month and are deductible from social tax. Only Kazakhstan citizens and foreigners with a residence permit are subject to social insurance.

### **Pension Contributions**

Pension contributions are withheld at a rate of 10% from employees' gross income. Gross income subject to obligatory pension contributions is capped at 75 MMW/month (approx. USD 5,000 ). Only Kazakhstan citizens and foreigners with a residence permit are paid pension contributions.

### **Wealth Tax**

There is no wealth tax.

### **Local Taxes**

There are no additional local taxes on income of individuals.

## 12.5 Tax Administration

### **Tax Reporting**

A Kazakhstan legal entity acting as a tax agent must file quarterly reports on taxes levied at source no later than 15 May, 15 August, 15 November and 15 February.

There is also a self-assessment method, whereby all taxpayers having taxable income (in the absence of a tax agent) are required to submit individual tax returns by 31 March of the year following the reporting year.

### **Payment of Tax**

Tax agents must withhold tax not later than the date income is paid. The tax is due prior to the 25th day of the month following the month of income payment.

Under the self-assessment method, tax is payable no later than 10 April of the year following the reporting year.

### **Foreign Tax Credits**

In order to claim a tax credit an individual must have (by 31 March) a "Certificate of income received from sources outside

of Kazakhstan and taxes paid" issued and certified by the foreign tax authority. A notarized translation of this Certificate into Russian or Kazakh must be provided.

## 12.6 Secondment

If appropriately structured, a secondment should not create a PE in Kazakhstan. The Kazakhstan legal entity to which the individual is seconded should withhold Kazakhstan payroll taxes from the person's remuneration.





# 13. Value added tax (VAT)

## 13.1 Introduction

Taxpayers registered as VAT payers are required to charge VAT on their VATable turnovers and calculate and report their VAT obligations.

The VAT rate is 12%.

Taxpayers are required to register if their VATable turnover in the preceding 12 months exceeded 30,000 MCI (approximately USD 187,147). Even if an entity is not required to register, it may do so voluntarily by submitting an application to the appropriate tax committee.

## 13.2 Scope of VAT

VATable turnover of goods include transfers of:

- title to goods, including sale, exchange, and payment of benefits in kind;
- goods under a finance lease contract; and
- goods by one division of a legal entity to another, if both divisions are registered as separate VATable persons.

VATable turnover of services are any supplies of services, chargeable and non-chargeable, including:

- transfers of copyright or intellectual property;
- services performed by an employer for the benefit of an employee as a form of remuneration; and
- services supplied between two or more divisions within one legal entity, provided that both divisions are registered as separate VATable persons.

VATable transactions exclude:

- transfers of goods with a value not exceeding 5 MCI (approximately USD31 ) for advertising purposes;
- provision of reusable packaging materials; and
- export of goods for exhibitions and similar activities, under the customs regime for temporary export of goods.

Goods and services are subject to VAT if they are deemed to be supplied in Kazakhstan under the place of supply rules.

If a service is supplementary to another service, the place of supply is determined by the primary service.

The place of supply for goods in other CU territories is similar to the rules for Kazakhstan.

Imports from the Customs Union are subject to the standard VAT rate.

## 13.3 Zero-Rating

Turnover taxable at the zero rate includes:

- export sales of goods;
- international transport services;
- sales of goods in SEZs under certain conditions.

## 13.4 Exempt Supplies

Supplies and imports exempt from VAT include:

- sale of residential buildings;
- certain financial services;
- transfers of assets under finance leases;
- geological exploration and prospecting;
- sales of goods and services, associated with the implementation of infrastructure projects;
- sale of an enterprise;
- import of certain assets, the list of which is approved by the Government;
- revenue from refining precious metals (gold and platinum);
- sales of goods and services associated with medical and veterinary activities, the list of which is approved by the Government.

## 13.5 Taxable Amount

**VATable Supplies.** A VATable supply includes any sale of goods and services and VATable imports into Kazakhstan, unless the supply is specifically exempt or the place of supply is outside Kazakhstan.

**VAT Offset.** Input VAT paid on goods and services purchased by a VAT payer including reverse-charge VAT and VAT paid at customs is available for offset when determining a taxpayer's VAT liability. However, offset is not possible for VAT incurred for supplies which are exempt or deemed to be supplied outside of Kazakhstan.

**VAT Calculation and VAT Offset Carry-Forward.** The VAT liability of a taxpayer is output VAT (VAT charged by a taxpayer) less input VAT (VAT paid by a taxpayer to its suppliers) in a reporting period.

The excess of input VAT over output VAT may be carried forward against future VAT liabilities for offset. Refunds are very difficult to obtain, although the law provides for refunds related to the export of goods, under certain conditions.

## **13.6 Non-Deductible Input VAT**

Input VAT is not allowed for offset on payments in connection with receipt of:

- goods and services not related to VATable turnover;
- building expenses for residential housing, except for buildings which are used as hotels;
- passenger cars purchased as fixed assets;
- goods and services received free of charge;
- goods and services on tax invoices which do not meet requirements of the Tax Code;
- goods and services on tax invoices where the cash payments exceeds 1,000 MCI (approximately USD 6,200).

## **13.7 VAT Incentives**

There are certain exemptions from import VAT. Please refer to Section 10.

## **13.8 VAT Compliance**

The tax period is a calendar quarter. The VAT declaration is due no later than the 15th and VAT payment is due no later than the 25th day of the second month following the reporting quarter.

**Reverse-Charge VAT.** Under “place of supply” rules, certain services are deemed to be supplied at the location of the business activity of the purchaser. These services include: consulting, audit, engineering, legal, accounting, advocacy, advertising and information processing services. Where the services are rendered by a non-resident not registered for VAT purposes in Kazakhstan, the purchaser is required to self-assess and pay VAT via a “reverse charge” mechanism.

The reverse-charge VAT paid by the purchaser is subject to the general offset procedure.

## Appendix A

### Key statistics and macroeconomic indicators of Kazakhstan

#### Republic of Kazakhstan

Total Area:	2,724,900 sq. km.
Estimated Population:	17,853,200 (1 September 2016)
Capital (with population):	Astana: 880,200 (1 May 2016)
Other Principal Cities (with population):	Almaty: 1,722,100 (1 May 2016), Shymkent: 893,788 (1 April 2016)
Languages:	Kazakh (official language), Russian (language of interethnic communication)
Neighboring states:	China, Kyrgyzstan, Russia, Turkmenistan, Uzbekistan.
Currency:	Kazakhstan Tenge (KZT)
Exchange rate:	KZT 333,29 = USD 1 (December 2016)
MCI (Monthly Calculated Index)	KZT 2121= approximately USD 6.2
NBK publish refinancing rate: (December 2016)	5.5%
Foreign currency reserves (December 2016)	National Bank – USD 29,600,600 National Fund – USD 29,530,000
Country rating:	S&P – BBB+ Moody's – Baa2 Fitch – BBB+

## Appendix B

### Tax rates

CIT	20%
Tax Depreciation	10% - 40%
Withholding Tax	Dividends, interest and royalties – 15%, services – 20%
Individual Income Tax	10%
VAT	12%
Property Tax	1.5%/year of net book annual value of immovable assets



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