

Doing Business in Kazakhstan: Legal Basics



Dear Friends,

We are presenting for your attention a review "Doing Business in Kazakhstan: Legal Basics" (the "Review") containing key information on the legal regulation and specifics of doing business in the country.

When preparing the materials, we have been taking into account the interests and needs of our clients in connection with various aspects of their activities in Kazakhstan. We hope that this Review, highlighting principal statutory regulations as of 1 April 2019, will prove helpful to guide you through the Kazakhstan's legal field.

The Review cannot be taken as legal advice or legal basis for specific Kazakhstan law related decision-making purposes. Should you require legal assistance, AEQUITAS would always be happy to see to your needs.

AEQUITAS Team

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LIST OF ABBREVIATIONS

JSC – joint stock company

GDP – gross domestic product

EAEU, Eurasian Economic Union – Eurasian Economic Union of the Republic of Armenia, Republic of Belarus, Republic of Kazakhstan and Russian Federation

IE – individual entrepreneur

MCI – monthly calculation index (in 2019, the MCI is 2,525 tenge)

AIFC – Astana International Financial Center

OECD – Organization for Economic Cooperation and Development

RK – Republic of Kazakhstan

LLP – limited liability partnership

Work permit – foreign labor engagement permit

1. KAZAKHSTAN 2019

1.1. General Information on Kazakhstan

According to the World Bank's [Doing Business](#) Report 2019, Kazakhstan was ranked 28th out of 190 countries. The World Economic Forum ranks Kazakhstan 59th out of 140 countries in terms of the [Global Competitiveness Index](#). The [WJP Rule of Law Index](#) measures Kazakhstan's rule of law performance at 65th place among 126 countries. In the [Legatum Prosperity Index](#) rankings for 2018, Kazakhstan is ranked 73rd out of 149 countries. According to the [Corruption Perceptions Index](#) rankings, Kazakhstan is 124th out of 180 countries, and 70th among 163 countries based on the [Global Peace Index](#).

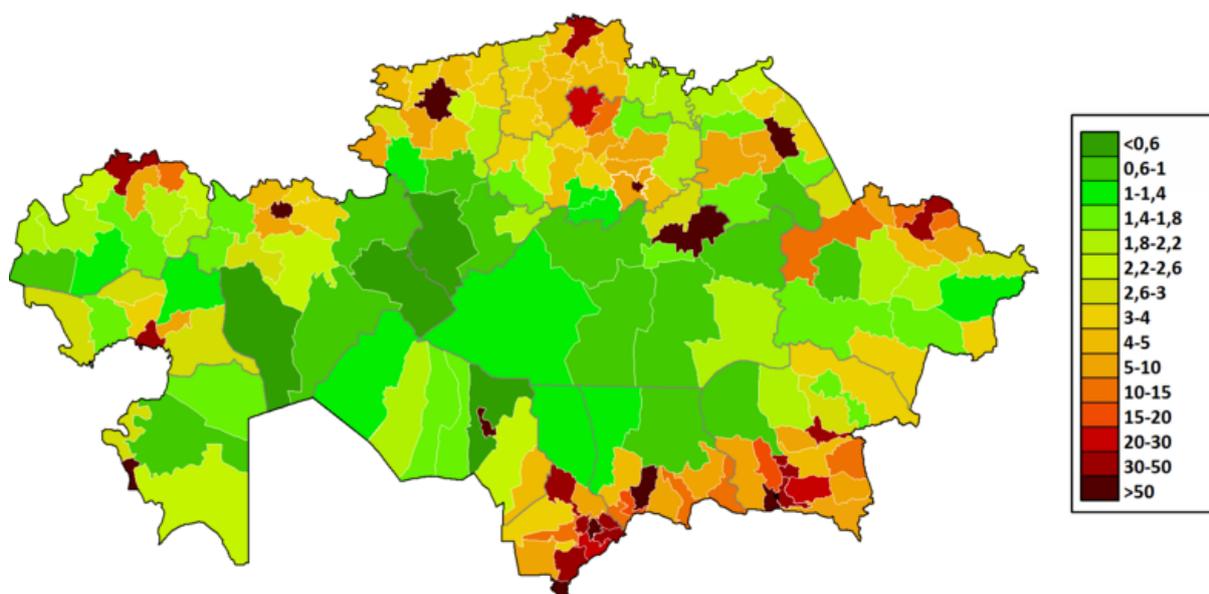
Area. 2,724,900 sq. km; ninth-largest country in the world by territory, the size of Western Europe.

Borders. 7,591 km of Kazakhstan's borders are with the Russian Federation in the north and west, 1,783 km with China in the east, 1,242 km with Kyrgyzstan, 2,351 km with Uzbekistan and 426 km with Turkmenistan in the south, the total land border length is 13,200 km. Kazakhstan is the world's largest landlocked country, its territory being washed by the enclosed inland Caspian and Aral Seas.

Administrative subdivisions. 14 oblasts and 3 cities of national significance (Almaty, Nur-Sultan and Shymkent). Major cities: Nur-Sultan (*previously Astana*, capital since 1998, population: 1.08 mln), Almaty (former capital, population: 1.85 mln), Shymkent (population: 1.01 mln people), Karaganda, Atyrau and Aktau. Among 8 regions covered by the Doing Business Report 2017, Almaty, Aktobe and Kostanay were the best cities for doing business in Kazakhstan.

Climate. Continental and extreme continental, cold winters and hot summers.

Population and ethnic composition. As of 1 January 2019, Kazakhstan's population is 18,395,660 people. Kazakhstan is the 63rd among the countries with the largest population. The average population density is 6.74 people per sq. km (184th place among the countries with the largest population density):



According to the data received at the beginning of 2018, the major ethnic group is Kazakh – 67.47%. Other ethnic groups are as follows: Russian – 19.76%, Uzbek – 3.18%, Ukrainian – 1.53%, Uyghur – 1.46%, Tatar – 1.11%, and other.

Religion. Kazakhstan is a secular multi-religious country. According to Gallup research, the level of religious commitment in Kazakhstan (43%) is the lowest in the Central Asian region. Sunni Muslim – 47%, Orthodox Christian – 44%, Protestant – 2%, other – 7%.

Languages. The main languages are Russian and Kazakh. Kazakh has the status of the state language; Russian is officially recognized as the language of inter-ethnic communication. Business is routinely using the Russian language.

In 2012, a decision was made on phased transition of the Kazakh language from the Cyrillic alphabet to the Latin script. The transition to the Latin script is to be accomplished until 2025.

Currency unit. Tenge (KZT); introduced on 15 November 1993.

Political system. Republic. The head of state is the President elected for a 5-year term by universal suffrage. The state power is divided into the executive, legislative and judicial branches. The principal legislative power body is the Parliament constituted by the upper (Senate) and lower (Mazhilis) chambers.

Natural resources. Kazakhstan's subsoil is prospected to contain 99 out of 105 elements of the periodic system; the reserves of 70 elements are explored and more than 60 elements are used in production. The country's mineral raw reserves encompass more than 5,000 deposits whose forecast value is estimated at tens of trillions USD. Kazakhstan is ranked the world's first for its prospected reserves of zinc, wolfram and barite, second for silver, lead and chromites, third for copper and fluorite, fourth for molybdenum, and sixth for gold, and is ranked the world's ninth for its proven reserves of oil, eighth for coal, and second for uranium.

Kazakhstan's oil industry is one of the major economy branches of Kazakhstan. The proven reserves of oil and gas condensate reach 39.8 billion barrels (approximately 5.3 billion tons). At the current rate of production and unchangeable oil and gas reserves, their production may last within 70 years. The first Kazakhstan oil was produced in November 1899 at Karashungul field in Atyrau Oblast. Kazakhstan produced 25.8 mln tons of oil in 1992 and 86.2 mln tons of oil in 2017. Major oil companies are Tengizchevroil, Karachaganak Petroleum Operating, NC KazMunaiGas, Mangistaumunaigaz, CNPC-Aktobemunaigas and others.

Kashagan is the first offshore oilfield in Kazakhstan's zone of the Caspian Sea, and the major investment project in Kazakhstan. The prospective oil volumes of Kashagan are estimated at 4.8 bln tons. The total oil reserves amount to 38 bln barrels, of which approximately 10 bln barrels are recoverable oil reserves. The natural gas reserves amount to more than 1 trn m³. Commercial production of oil at Kashagan started on 1 November 2016, amounting to 8.35 mln tons in 2017. In 2018, the oil production volumes are expected to reach 370,000 barrels per day.

Agriculture. Kazakhstan is among the world's top ten exporters of grain and one of the leaders in flour export. The main crops are wheat, barley, millet, rice, cotton and tobacco. Kazakhstan is also famous for its gardens, vineyards and melon crops. The key livestock production areas are cattle, horse, camel and sheep farming. The country also has developed poultry farming and fisheries.

Transport. Kazakhstan's transportation and communications complex includes railways, airways, river transport, pipelines, motorways and telecommunications systems. Cargos are mostly transported by railway. Maritime navigation in the Caspian Sea has direct access to Iran and Azerbaijan through the ports of Aktau and Bautino. In 2019, it is planned to complete the construction of the Kazakh section of the Western Europe – Western China international motor road corridor (8,445 km of which 2,787 km in the Kazakhstan territory).

As of 1 January 2016, the Kazakhstan's pipelines extend to 23,271 km, of which gas pipelines are 15,255.5 km long and oil pipelines are 8,015.1 km long. Caspian Pipeline Consortium (CPC) is a major international crude oil transportation project with the participation of Kazakhstan, Russia and leading international oil and gas companies, created for construction and operation of a trunk pipeline 1,500 km long. In 2017, the CPC pipeline transported 49.6 mln tons of crude oil. The country's overall technical capability to export oil is about 100 mln tons.

Tourism. Major resorts: Burabay, Saryagash, Kapchagay, Zerenda, Muyaldy, Karkaralinsk, Bayanaul, Alakol; ski resorts: Shimbulak, Tabagan, Yelekty, Akbulak. The Valley of Castles is one of the most interesting parts of the Charyn Canyon. Fishing and mountain hiking are also well-developed in Kazakhstan.

1.2. Social and Economic Development Summary

The Kazakhstan 2050 Strategy, the purpose of which is to position Kazakhstan among the top 30 global economies, has been implementing since 2012. In 2015, Kazakhstan launched the Plan of the Nation "100 Concrete Steps to Implement Five Institutional Reforms." For instance, one of the tasks in the sphere of issuing construction permits is to introduce three-stage process: to issue an architectural planning assignment within 30 days; to approve the design documents within 20 days; and to issue a construction permit within 10 days. The year 2017 marked the launch of the Third Modernization of Kazakhstan, successful implementation of the Industrialization Program, adoption of a complex program "Digital Kazakhstan" and development of a comprehensive Strategic Development Plan of Kazakhstan until 2025.

Starting 2017 Kazakhstan became a non-permanent **member of the United Nations Security Council** and temporarily presided over the **United Nations Security Council** in 2018.

On 20 March 2019 **Kassym-Jomart Tokayev** took office as the President of Kazakhstan, succeeding Nursultan Nazarbayev who resigned on 19 March 2019 after 29 years in office. Immediately after the inauguration, Tokayev proposed renaming the capital city of Kazakhstan after his predecessor, and the same day the Parliament of Kazakhstan approved the **renaming of Astana to Nur-Sultan**.

On 9 April 2019, Tokayev announced early presidential elections to be held on 9 June 2019.

National economy. At the end of 2018, gross domestic product (**GDP**) growth reached 4.1%, and industrial production growth exceeded 4.1%. The level of **unemployment** fell to 4.9% (445,100 people). As of 1 January 2019, the number of registered **legal entities** increased for 5.1% and reached 433,774. The number of operating legal entities is 279,720.

One of the major economic events of the year was the launching of the Astana International Financial Center (AIFC) and the Astana International Exchange (AIX) in 2018 whose main objective is to assist with attracting investments in the country's economy.

In 2018, three weak banks terminated their activities. These are Qazaq Banki, Eximbank Kazakhstan and Bank of Astana.

Kazakhstan also launched Astana Hub technological park whose mission is to develop startup cultures and support high-technology projects to strengthen the country's economy. Startup projects are expected to attract 67 bln tenge of investments by 2022.

Real economy. In 2017, the oil production volumes reached 86.2 mln tons. The main production gain occurred in 2017 is connected with the stable oil production at the Kashagan and Tengiz fields. The mean price for Brent Crude in 2016 was USD 45 per barrel, in 2017 – USD 54 per barrel, and the anticipated price for 2018 was USD 55.60 per barrel.

On 12 August 2018, the V Summit of the Leaders of the Caspian States took place in Aktau, which served as a platform for the adoption of a historical document – Convention on the Legal Status of the Caspian Sea. The work on the Convention took more than 20 years. The "Caspian Five" thus resolved the years-long issue of developing the reserves, including hydrocarbons, of the largest drainless water body in the world.

On 12 October 2018, after the modernization of the Kazakhstan gas transmission system Kaztransgas JSC and PetroChina International Company Limited signed a long-term 5-year contract in Beijing to twice increase the export of the Kazakhstan gas from 5 bln m³ per year to 10 bln m³.

The key transport and logistics project in 2018 was the Kuryk diverse harbor (east coast of the Caspian Sea, to the south of Aktau seaport) with the capacity of 7 mln tons of cargo. A new transcaspian route through Kuryk will ensure efficient logistics when delivering cargo from China, Central Asian countries, Ural and Siberian regions of Russia to Turkey, Europe and back.

On 4 December, Kazakhstan and Space X, a company organized by Elon Musk, for the first time launched two Kazakhstan satellites, KazSTSat and KazSciSat-1, for scientific and technological purposes from the Vandenberg Air Force Base, California.

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2. LEGAL SYSTEM AND SPECIFICS OF BUSINESS REGULATION IN KAZAKHSTAN

2.1. General Information on Kazakhstan's Legal System

Kazakhstan's legal system classifies as a Romano-Germanic (continental) system of law. The basic law having the highest legal force is the Constitution adopted in 1995 at a national referendum. The law currently in effect in Kazakhstan is the regulations of the Constitution, the Constitution-compliant laws and other legal acts, international treaties and other obligations of the Republic of Kazakhstan (RK), and the regulatory resolutions of the Constitutional Council and the Supreme Court. The international treaties ratified by Kazakhstan prevail over the national legislation and apply directly, unless the international treaty requires a special act to be issued in order for the treaty to apply.

Practically all forms and stages of doing business in Kazakhstan are legally regulated. A large number of subordinate acts (instructions, orders, etc.), which are mandatory and binding, are in effect alongside with the principal statutory acts (laws, Government decrees, etc.).

The local legislation lacks stability: acts of all levels (legislative and subordinate) are being revised and amended on a regular basis. The major factors triggering the substantial revision and amendment of the Kazakh legislation are currently Kazakhstan's accession to the WTO, the country's plans to join the OECD, further implementation of the strategy "Kazakhstan 2050," Plan of the Nation "100 Concrete Steps" to implement five institutional reforms, program of modernizing Kazakhstan's national identity "Rukhani Zhangyru," "Digital Kazakhstan" program dated 12 December 2017, strategic plan of developing the Republic of Kazakhstan until the year 2025, and the need to attract investments into economy, as those have dwindled due to the investment legal regime deterioration over the past fifteen years.

Kazakhstan's law application and enforcement practice cannot boast uniformity. Same-level courts can issue different, sometimes contrary, judgments in similar disputes. This may to a certain extent be explained by the fact that, formally, judicial precedent is not the source of law in Kazakhstan. In practice, the provisions of regulatory legal acts often find different, sometimes mutually contradicting interpretation by different governmental agencies.

Currently, Kazakh legislation is going through the stage of harmonization with the unified supra-national legislation of the Eurasian Economic Union. The past several years witnessed the adoption of a large number of international treaties establishing the unified principles of governmental agencies' work and commercial activities regulation in the Union's territory.

2.2. Entrepreneurial Code of the Republic of Kazakhstan

On 1 January 2016 Kazakhstan promulgated its Entrepreneurial Code to incorporate the regulations from several laws governing certain issues of entrepreneurship, mostly in the field of relationships between business and the state. Industry-specific types of entrepreneurship are to be regulated by special laws, as before.

The Code is generally intended to improve and develop the legislation regulating interaction between business entities and the state, support business, and eliminate gaps and contradictions in the legal regulation of entrepreneurial relations.

The Code introduces some new regulations, principles and concepts in the field of entrepreneurship, in particular, the principles of social responsibility of entrepreneurs, limited participation of the state in entrepreneurial activities, self-regulation in the field of entrepreneurship, and mutual responsibility of business entities and the state. The Code also introduces a new category of micro-enterprises and establishes a regime for self-regulating

entrepreneur organizations and for consultative-and-advisory bodies with participation of the state and business representatives.

In addition to the traditional means of protection including judicial protection, arbitration and mediation, the Code also mentions participatory procedures and introduces the person of Kazakhstan Business Rights Commissioner.

Participatory procedures are carried out without judge's involvement, through negotiations between the parties with assistance of both parties' lawyers in order to settle the dispute.

The Kazakhstan Business Rights Commissioner is a person appointed to this position by the Presidential decree in order to represent, ensure and protect the rights and legitimate interests of business entities.

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3. LEGAL ENTITIES

3.1. General Provisions on Legal Entities

Types of legal entities. In Kazakhstan, commercial legal entities (a legal entity or a company) may be organized using different forms of incorporation, of which the most extensively used are limited liability partnerships (LLPs) and joint stock companies (JSCs).

Legislative regulation. The key legislative acts governing the activities of the said types of legal entities are the RK Civil Code (its General Part adopted in 1994 and Specific Part adopted in 1999), RK Law on Partnerships with Limited and Additional Liability of 22 April 1998, RK Law on Economic Partnerships of 2 May 1995 and RK Law on Joint Stock Companies of 13 May 2003, all of these in effect as many times amended.

State registration of legal entities. In order to acquire the status of a legal entity, the latter must be registered with the RK Ministry of Justice. The statutory period for registration is one business day (with certain exceptions). In fact, the registration takes a longer period. The registration is made based on application attaching the required documents (set of corporate documents, extracts from the companies register, etc.).

Online registration is currently available in Kazakhstan for small business entities, using the entity founder's electronic signature¹.

Re-registration and liquidation (winding-up) of legal entities. The legislation establishes statutory grounds for mandatory re-registration and liquidation (winding-up) of legal entities, which include, in particular, a change of legal entity's name, change of LLP participants, etc. Any legal entity may be liquidated either by court judgment, or on a voluntary basis. In certain fields of activities (banking, insurance, etc.), liquidation is carried out subject to certain peculiarities.

Corporate documents. The main corporate documents of Kazakh companies are the **charter** and **foundation agreement** (if the number of participants or founders is more than one). The foundation agreement is a document constituting commercial secret. At JSCs, the foundation agreement terminates from the moment of the first issue of shares. At LLPs in which the register of participants is maintained by the registrar, the foundation agreement terminates from the date the register has been formed.

Liability of participants. As a general rule, the LLP participants' (JSC shareholders') liability is limited by the amount of their contribution (value of shares held). The legislation may provide for the cases where a participant (shareholder) may be held vicariously or jointly and severally liable for the legal entity's debts.

Restrictions on foreign participation. Kazakh companies engaging in certain types of activities, such as telecommunications, security, mass media, airline companies, etc., are subject to certain restrictions on foreign participation (individuals and legal entities).

Legal entities registered in offshore zones cannot directly or indirectly own, use and dispose of the voting shares in banks, insurance (reinsurance) organizations, investment fund or organizations engaging in the licensed types of activities on the securities market.

¹ Please see information on AEQUITAS projects to establish foreign company businesses in Kazakhstan on page 54.

3.2. General Provisions on LLPs

LLPs are the most commonly encountered form of legal entities incorporation in Kazakhstan.

LLP participants may be both individuals and legal entities. The maximum number of participants is not limited. An LLP may as well have one participant, however, such participant cannot be another economic partnership (having the relevant status under the Kazakh legislation) organized by a sole participant.

The **minimum amount of an LLP charter capital** is 100 MCI for medium and large business entities. Starting 2015, state registration of LLPs that are small business entities no longer requires initial contributions to the charter capital.

The partnership's charter capital is divided into participation interests, which are normally in proportion to the participants' contributions. The number of votes, amount of dividends and other participants' rights depend on the size of participation interests.

Normally, the LLP management has a two-level structure, as follows:

- **supreme body** – the general meeting of participants (the sole participant); and
- **executive body** (sole or collective).

Any person, **including a foreigner**, may head the executive body (or be the sole executive body). LLPs may set up supervisory and audit bodies.

3.3. General Provisions on JSCs

A JSC is understood as a legal entity issuing shares in order to raise funds to carry out its activities.

A JSC may issue common shares or common (at least 75%) and preferred shares (not more than 25%). Shares are issued in a non-documentary form. Common shares are voting shares. Preferred shares give a priority right to receive dividends in a previously determined amount and to receive a part of property in case of the JSC liquidation. Holders of preferred shares may only vote on certain issues affecting such shareholders' rights or in case payment of dividends is delayed for more than three months. All shares in a JSC may be held by one shareholder.

The **minimum amount of a JSC charter capital** must be 50,000 MCI and is to be formed via payment for shares.

The JSC management structure is three-level, as follows:

- **supreme body** – the general meeting of participants (the sole participant);
- **management body** – the board of directors; and
- **executive body** (sole or collective).

The members of a JSC's board of directors and executive body may only be individuals. The members of the board of directors and the executive body may be persons who are not the company shareholders.

3.4. Differences in the LLP and JSC Legal Regime

LLPs and JSCs differ quite seriously, which must be taken into account when deciding on setting up a legal entity.

The key difference between an LLP and JSC is a tougher regulation of JSC activities, which is mostly due to the issue of shares (JSC's fundamental operating matter) being controlled by a special state regulator.

The LLP activities are less formalized, which allows some freedom when deciding, for example, on such issues as management procedure, distribution of participation interests, distribution of participants' votes, etc. Moreover, since LLPs do not issue shares, they are exempt from a number of statutory requirements pertaining to securities.

In a JSC, each common share gives its holder the same scope of rights with the other holders of common shares. Voting at general meetings of shareholders is held according to the "one share – one vote" principle.

Changes in the composition of LLP participants (except for LLPs whose register of participants is maintained by a registrar), for instance, as a result of a participant's selling or otherwise alienating his/her/its interest, are the ground for the LLP re-registration with the justice authorities. A sale or alienation of shares entailing changes in the composition of shareholders does not entail the JSC state re-registration.

It is also necessary to mind the following specific statutory requirements to JSC activities:

- a larger (as compared to LLPs) amount of minimum charter capital and the need to fully pay it in within 30 days of the JSC state registration;
- the need to observe a special procedure when consummating certain categories of transactions, as well as the public disclosure requirement;
- complicated shares issue registration procedure; and
- the procedure for convening and holding the general meeting of shareholders is strictly regulated by legislation.

3.5. Branch/Representative Office

According to Kazakh legislation, **branches/representative offices** are not legal entities, but are recognized as their structural subdivisions located outside the principal location of the parent company.

The difference in the branch vs. representative office legal regulation is that a branch may perform all functions of the parent company, including representative functions, while a representative office is normally set up in order to study the market and to represent and protect the parent company's interests, and does not carry out commercial activities.

The key differences between a branch/representative office and a legal entity are as follows:

- no requirement to form a charter capital;
- no need to obtain the foreign labor engagement permit (work permit) for the head of branch/representative office;

- status of RK nonresident for the purposes of currency regulation, hence, the possibility to make payments to RK residents in foreign currency; however, starting 1 July 2019, branches and representative offices of foreign companies will be recognized as currency residents and will have to make payments to RK residents in tenge; and
- income after taxes in Kazakhstan may be repatriated without paying additional taxes and without complying with the currency control requirements.

Branches/representative offices have no property of their own (all property is deemed to be the parent company's property) and act in civil relations on behalf of the parent company, the liability for their actions also lying with the parent company. Branches and representative offices are independent taxpayers with respect to certain types of taxes, and are liable as legal entities if committing administrative violations in the taxation area.

Branches/representative offices are managed by their heads appointed by the authorized body of the parent company and acting based on a power of attorney. The head of a branch/representative office may be any person, regardless of residence.

Branches/representative offices are subject to the state record registration.

When choosing between the form of business incorporation in Kazakhstan and between a branch/representative office and a legal entity, it is necessary to take into account the statutory provisions on public procurement and provisions relating to procurement by national companies. Given the toughening of legislative requirements to local content in goods, work, services and staff, preference in procurement is typically given to local companies.

3.6. Acquisition of Shares (Participation Interests) In Kazakh Companies

As a rule, participation interests in LLPs are acquired based on a sale and purchase agreement (it is also possible to use other types of civil transactions). Acquisition/alienation of participation interests entails change of the LLP participants, which is a ground for the LLP state re-registration (except where the register of LLP participants is being maintained by a registrar). When a new participant enters the LLP, it is necessary to execute the so-called agreement on accession to the foundation agreement, or to enter into the foundation agreement (if the partnership had a sole participant before the entry of the new one).

If the LLP participation interests are alienated in favor of a third party, the remaining participants have a pre-emptive right to purchase such participation interests.

Shares may be acquired both at their initial public offering by the JSC, and on the secondary securities market. If intending to acquire 30% or more shares, the acquirer must notify both the company itself and the financial market supervision authority. After having acquired 30% or more of voting shares, the acquirer must make an offer to the remaining shareholders to buy out their shares.

Special requirements are established with respect to the acquisition of shares in banks and insurance companies and shares and participation interests in subsoil user companies, owners of strategic facilities and other organizations engaging in certain types of activities. In particular, if alienating shares and participation interests in subsoil user companies, it is required to obtain the state's consent to such alienation, while the state has a pre-emptive right to purchase the shares or participation interests being alienated. Similar rules apply to strategic facilities, the list of which is approved by the RK Government.

Depending on the parameters of the shares or participation interests alienation/acquisition transaction, it may be required to first obtain the antimonopoly agency's consent.

3.7. National Chamber of Entrepreneurs

The National Chamber of Entrepreneurs ("NCE") is a non-profit self-governed organization established in order to form favorable conditions for the development of entrepreneurship based on the effective partnership of business and authorities.

The NCE's objectives are to protect the rights and interests of entrepreneurs and to ensure broad coverage and involvement of all entrepreneurs in the process of formation of legislative and other normative rules for business functioning.

The NCE members are automatically all for-profit legal entities registered in Kazakhstan (including banks and banking organizations, national companies, and organizations comprising national holding companies active in the industry, agriculture and financial sector), individual entrepreneurs, and agricultural (farming) enterprises, which must pay a membership fee based on the amount of their aggregate annual income.

Branches and representative offices of foreign organizations, entrepreneurship entities engaging in audit and valuation activities, state enterprises, and non-profit legal entities do not fall under membership in the National Chamber.

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4. ANTIMONOPOLY REGULATION AND NATURAL MONOPOLIES

4.1. *Economic Concentration Control*

The **economic concentration transactions/actions**, which are subject to prior approval by the Kazakhstan antimonopoly agency, include:

- reorganization by way of merger or accession;
- acquisition of voting shares (participation interests), as a result of which the acquirer or its group of entities acquires the right to dispose of more than 50% of shares (participation interests). This requirement does not apply to legal entity's founders at its establishment;
- obtainment of ownership, possession and use over fixed production assets or intangible assets, if the book value of property constituting the subject of transaction exceeds 10% of the book value of the fixed production assets and intangible assets of the market entity alienating or transferring the property;
- acquisition of rights enabling to issue instructions binding on another market entity in its conducting business activities or to perform the functions of its executive body; and
- participation of one and the same individuals in the executive bodies, boards of directors, supervisory boards or other management bodies of two or more legal entities, provided that such individuals define the conditions of such market entities' business activities.

In certain cases the above transactions/actions are not considered economic concentration, for example, if such transaction occurs within one group of entities.

It is required to obtain the consent of/notify the antimonopoly agency in case the aggregate book value of assets of the legal entities being reorganized (group of entities) or the acquirer (group of entities) under the transaction and the legal entity whose shares (participation interests) are being acquired, or their aggregate sales of goods for the past financial year exceeds, as of the date of application submission, 10,000,000 MCI.

Transactions involving financial organizations fall under special conditions.

The Chapter "Economic Competition" of RK Entrepreneurial Code adopted on 29 October 2015 and effective since 1 January 2016 is extraterritorial: some of its provisions also apply to actions performed outside Kazakhstan, provided that such actions:

- directly or indirectly affect fixed or intangible assets located in the RK territory, or shares (participation interests) of market entities, or property or non-property rights with respect to RK legal entities; or
- limit competition in Kazakhstan.

Economic concentration performed without antimonopoly agency's consent may be invalidated by court upon a claim by antimonopoly agency, if such concentration has led to the establishment or strengthening of a dominant or monopolistic position of a market entity or a group of entities, or to the limitation of competition.

Annex 19 to the Treaty on the Eurasian Economic Union "Protocol on General Principles and Rules of Competition" is effective within the EAEU.

4.2. Ban on Monopolistic Activities

The competition protection legislation bans monopolistic activities. The types of monopolistic activities restricted by law include anti-competitive agreements and concerted actions by market entities and abuse of a dominant or monopolistic position.

Recognized as **monopolistic** is the position of the natural monopoly entities, state monopoly entities or legal entities holding 100% share on the relevant commodity market.

Recognized as **dominant** is the position of a legal entity whose share on the relevant commodity market constitutes 50% or more. Also, if some conditions are present, the position of an entity can be recognized as dominant if its share on the relevant commodity market constitutes 35%. Special criteria are stipulated for collective dominance.

Unfair competition is prohibited. The RK Entrepreneurial Code sets out an exhaustive list of actions, which may be recognized as unfair competition, such actions include, but are not limited to the following:

- unlawful use of other manufacturer's trademarks, packaging and products;
- copying of product appearance;
- knowingly false, unfair or untrustworthy advertising; and
- sale of goods, providing to the customer untrustworthy information on the nature, method and place of manufacture, consumer properties, quality and quantity of goods, or on their manufacturers, etc.

4.3. Natural Monopolies Regulation

The **natural monopoly** in Kazakhstan encompasses certain types of services (goods, work) relating to oil and oil products; commercial and sour gas; electric and heat power; main-line railways, access ways, air navigation, port and airport services; water supply and disposal. The list of services (goods, work) subject to regulation is approved by the authorized agency, which, as of the date hereof, is the RK Ministry of National Economy.

The natural monopoly entities are subject to specific restrictions and additional obligations, for instance, the natural monopoly entities cannot:

- charge payment for providing information about available capacities;
- request for provision of permits and other documents issued by governmental agencies, non-governmental organizations, which do not relate to a service subjected to regulation;
- impose requirements on a consumer other than the requirement to comply with technical conditions for connecting to the natural monopoly entity's networks or increasing the scope of services subjected to regulation;
- create unequal access conditions to a service subjected to regulation;
- restrict the consumer's activities involving the performance of work in accordance with the technical conditions for connecting to the natural monopoly entity's networks or increasing the scope of services subjected to regulation;

- request for approval of a construction project as to compliance with technical conditions for connecting to the natural monopoly entity's networks or increasing the scope of services subjected to regulation.

Natural monopoly entities are obligated, among other things, to provide services (goods, work) subjected to regulation at the tariffs (prices, fee rates) as approved by the authorized agency, and inform consumers about the tariffs and tariff changes within the timeframes provided for by legislation.

Besides, the state regulates the prices for goods (work, services) produced on socially significant markets in the field of rail transport, electric and heat power generation, oil products manufacture, oil and gas transportation, and civil aviation, as well as prices for subsidized services in the area of postal services, telecommunications and shipments. Natural monopoly entities are obligated to comply with the pricing procedure on regulated markets and to submit to the authorized agency the information on the sale prices for goods (work, services), quarterly and monthly information on the volume of production (sales) and rate of return, etc.

The Protocol on Common Principles and Rules for Regulation of Activities of Natural Monopoly Entities applies to the EAEU member states (Annex 20 to the Treaty on the Eurasian Economic Union).

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5. SPECIAL ECONOMIC ZONES

Kazakhstan has several so-called **special economic zones ("SEZ")** in its territory, which are understood as a restricted territory with favorable conditions for carrying out priority types of activities, the list of which is determined by an authorized governmental agency exercising state regulation of activities of SEZ. The resolution to set up a SEZ is adopted by the Kazakhstan Government.

Each SEZ has been set up in order to develop a particular sector of economy. For example, the "Ontustik" SEZ was created in the South-Kazakhstan Oblast to develop textile industry; "Nur-Sultan – the New City" SEZ – in order to set up highly efficient and competitive enterprises and to master the manufacture of new types of products; "Information Technologies Park" SEZ in Almaty – in order to develop the IT branch of economy; and "Khorgos – Eastern Gate" SEZ – in order to create an efficient transport-and-logistics and industrial hub, and to unlock Kazakhstan's transit potential, which will contribute to the development of economic and cultural exchange with the bordering countries.

A SEZ may be set up for a term up to twenty five years.

The participants in a SEZ enjoy in its territory a special legal regime provided for by the tax, customs, land and labor legislation.

For instance, pursuant to the Tax Code, when assessing the corporate income tax payable to the state budget, its amount is reduced by 100%; the land tax is assessed applying zero coefficient; and when calculating the property tax, the annual average value of taxable items is zero rated.

Foreign and domestic goods located and used in the SEZ territory fall under the free customs zone procedure: no customs duties and taxes (other than excise tax) are levied on imported goods, no restrictions or limitations are applied to the EAEU goods and no non-tariff regulation measures are applied, except for product safety requirements.

No customs clearance of goods moved within the customs territories of the Republic of Kazakhstan, Republic of Belarus, Russian Federation and Republic of Armenia is required.

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6. INVESTMENT

6.1. General Provisions

Today, Kazakhstan holds a leading position among the CIS countries by the amount of attracted foreign investment per capita.

The current investment regime is determined by the RK Entrepreneurial Code of 29 October 2015 and by a number of international conventions and treaties.

The Code provides for the state support of investment activities and for state guarantees of investor rights (contract stabilization, free use of income, transparency of state investment policy, compensation for losses in case of nationalization or requisition of investor's property, and some other), as well as the possibility to resolve investment disputes through negotiations or international arbitration.

Pursuant to the Investment Law, understood as **investment** in Kazakhstan are all types of property (except for goods intended for personal use), including subjects of financial leasing and rights thereto, contributed by the investor into the charter capital of a legal entity, or the increase of fixed assets used for entrepreneurial activities or for the implementation of public-private partnership projects, including concession projects.

Bilateral international treaties also contain the "investment" concept, sometimes broader than that contained in the Entrepreneurial Code; therefore, in each particular case of defining the investment legal regime it is necessary to take into account not only the provisions of the Code, but also the provisions of the relevant international treaties.

Domestic and foreign investors generally fall under the same investment regime, with certain exceptions.

6.2. Investment Legal Regime

6.2.1. Guarantees of Investor Activities Legal Protection

Investors enjoy protection of their rights and interests ensured by the RK Constitution, RK Entrepreneurial Code and other regulatory legal acts, as well as by ratified international treaties.

This guarantee provides for investor's right to the compensation of harm caused by the issuance of subordinate legislative acts incompliant with the RK legislation or by unlawful actions (omissions) of the state officials.

Kazakhstan also guarantees stability of contracts entered into between investors and Kazakh governmental agencies, with certain exceptions expressly provided for by legislation, which specifically include as follows:

- introduction of amendments into the RK legislation, or entry into force or amendment of international treaties, which change the procedure and conditions for the importation, production and sale of excisable goods; and
- introduction of amendments into legislative acts in order to ensure the national security, public order, healthcare and morals of the population.

6.2.2. Use of Income Guarantees

The legislation entitles investors to use at their discretion the proceeds from their activities after payment of taxes and other obligatory payments to the budget, and open accounts in national or foreign currency with the banks in the RK territory.

6.2.3. Guarantees of Investor Rights in Case of Nationalization or Requisition

Compulsory taking of investor's property for public needs is only allowed in exceptional cases stipulated by legislative acts. In such cases, the investor is to be compensated for the losses in full.

6.2.4. Dispute Settlement

Investment disputes may be settled through negotiations or in accordance with the dispute settlement procedure previously agreed upon by the parties. Typically, investors choose commercial arbitration as a method to settle the disputes.

Investment disputes may also be settled in accordance with international treaties and RK legislative acts in Kazakh courts or investment arbitration.

6.3. International Legal Protection of Investment

In order to ensure the international legal protection of investments, Kazakhstan ratified the following international conventions (treaties):

- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958);
- Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) (Washington, DC, 18 March 1965);
- Convention Establishing the Multilateral Investment Guarantee Agency (Seoul, 11 October 1985);
- Energy Charter Treaty (Lisbon, 17 December 1994);
- Convention for the Protection of Investors' Rights (Moscow, 28 March 1997).

Besides, Kazakhstan participates in a number of multilateral treaties for the support and encouragement of investments, including bilateral investment treaties with more than 40 states.

6.4. Investment Preferences

Investor **preferences** are possible in priority branches of economy, which include, in particular: manufacture of food products, apparel, paper products, radio equipment and transport vehicles; processing industry; chemical industry; metallurgical industry; construction; transport and telecommunications infrastructure, etc.

Preferences are granted only to Kazakh legal entities implementing an investment project, priority investment project, special investment project, or strategic investment project, and to leasing companies (including RK nonresidents, importing, as part of an investment project implementation, process equipment under a financial leasing contract for a Kazakh legal entity implementing the investment project).

The following types of investment preferences are granted for investment projects (including priority investment projects):

- exemption from customs duties and value added tax on imports; and
- state in-kind grants.

The following types of investment preferences are granted for priority investment projects:

- **tax preferences** (up to 10 year exemption from corporate income tax; up to 10 year exemption from land tax; and up to 8 year exemption from property tax); and
- **investment subsidy** (state's compensation of up to 30% of investor's costs after facility commissioning).

Tax preferences are available for strategic investment projects (up to 10 year exemption from corporate income tax; up to 7 year exemption from land tax; and up to 7 year exemption from property tax).

Special investment projects are granted preferences in the form of exemption from import customs duties.

In order to be granted preferences, investors must enter into a contract with the authorized state agency.

6.5. Additional State Support Measures

In the framework of concluded contracts for priority investment projects implementation, the law provides for the "stabilization" of tax rates.

Besides, investors may engage foreign labor, beyond quota, for the entire construction period of the investment project and for one year after the facility commissioning.

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7. SUBSOIL

7.1. *Subsoil Use Legal Regulation*

The Kazakhstan Code on Subsoil and Subsoil Use (Subsoil Code) was adopted on 27 December 2017 and entered into force on 29 June 2018, i.e. upon expiration of six-month period of the date of its official publication, which took place on 28 December 2017. The only exception is a norm governing a particular case of introducing data into the program for the state management of the subsoil fund upon the subsoil user's application (Article 278.4.3 of the Code), which entered into force on 8 January 2018. Three regulatory norms will be put into effect in 2020 and 2021.

The Subsoil Code cancelled the previous basic law governing the subsoil use issues as applied to all minerals – Kazakhstan Law on Subsoil and Subsoil Use of 24 June 2010 (which replaced the 1996 Law on Subsoil and Subsoil Use and 1995 Oil Law).

To date, Kazakhstan is in the process of adopting new subordinate acts in furtherance of the Subsoil Code and to adapt the previously adopted subordinate acts to the provisions of the Subsoil Code, which will change most of them.

Relations in the subsoil use area are also governed by the provisions of civil, environmental, corporate, currency, land and other sectoral legislation.

The most important international treaty relating to subsoil use and ratified by Kazakhstan is the Energy Charter Treaty. International regulation also covers environmental protection, legal status of the Caspian Sea and other issues. Besides, also in effect are bilateral investment treaties entered into by Kazakhstan with practically all economically developed countries and some CIS countries.

7.2. *Subsoil Use Right*

The subsoil use right is granted in order to conduct the following operations:

- geological study of subsoil;
- minerals exploration;
- minerals production;
- use of subsoil space; and
- prospecting.

Subsoil use right represents an opportunity secured by the Subsoil Code to use subsoil within a definite term on a fee-paid basis in the allocated plot for business purposes.

Subsoil use right may be granted to local and foreign legal entities and individuals.

Subsoil use rights may also be granted to several persons under the same contract. Such persons are joint right holders and may hold the subsoil use right only after determining the share held by each of them.

In order to identify the territory of a subsoil block for the purpose of exploration and geological study of subsoil the Kazakhstan territory is conditionally divided into blocks, each side of which is equal to 1 minute in the Geographic Reference System.

7.3. Origination of Subsoil Use Right

Subsoil use right originates on the basis of a license or a subsoil use contract.

Subsoil use right may be acquired in the event of granting the subsoil use right by a public authority, transferring the subsoil use right (share therein) under civil transactions and in accordance with the legal succession procedure, if a legal entity is reorganized, except for transformation or inheritance.

To date, there are two regimes of subsoil use: license regime and contract regime.

License regime.

Licenses are issued for certain types of subsoil use operations, as follows:

- geological study of subsoil;
- solid minerals exploration;
- solid minerals extraction;
- common minerals production;
- use of subsoil space; and
- prospecting.

A license for exploration of solid minerals is issued based on an application from a future subsoil user for the term of 6 consecutive years with a possibility to extend the license for another term of up to 5 years, if a relevant application is filed by a subsoil user. The subsoil use right under an exploration license cannot be transferred within the first year of its term.

If an exploration license covers 10 blocks or more, it may be extended if a subsoil user waives of a part of the exploration plot, and the territory of such part must be at least 40% of such blocks.

The term of a license for extraction of solid minerals cannot exceed 25 consecutive years and may be extended for an unlimited number of times for the term not to exceed the initial license term.

The territory of a plot (plots) for exploration of solid minerals under one license cannot exceed 200 blocks.

License for extraction of solid minerals is subject to revocation by the competent authority under one of the below grounds:

- violation of requirements to obtainment of a permit for the subsoil use right transfer entailing a threat to national security;
- failure to pay the subscription bonus and fees for the use of land plots (lease payment) in the amount and in accordance with the procedure established by the tax legislation of Kazakhstan;
- failure to perform obligations on annual minimum expenses for solid minerals exploration established by a license;
- any grounds for revocation of a license specified in the license.

In the event of violating the obligations stipulated by a license, the competent authority will send a respective notice in writing. In the event of failure to eliminate a violation within the term established by the Subsoil Code, the competent authority will revoke the license by sending a respective notice in writing.

Contract regime.

A subsoil use contract is concluded for the purpose of exploration and production of hydrocarbons and uranium.

Individuals and legal entities who are not national companies may be granted subsoil use right under a contract according to the auction results. Subsoil use right is granted to national companies on the basis of direct negotiations.

The maximum duration of hydrocarbons exploration cannot exceed 6 consecutive years, and if the case is about an offshore subsoil block or complicated hydrocarbons exploration projects, the exploration duration cannot exceed 9 years.

In order to evaluate the discovered deposit, including trial production, the term for exploration under the hydrocarbons exploration and production contract may be one time extended with respect to each discovered deposit (aggregate of deposits) for the term up to 3 years, and if the case is about an offshore subsoil block or complicated hydrocarbons exploration projects – up to 6 years.

Taking into account the allowed extensions, the exploration stage under the hydrocarbons exploration and production contract cannot exceed 9 years, and if the case is about an offshore subsoil block or complicated hydrocarbons exploration projects – 15 years.

The maximum duration of production cannot exceed 25 years, and at major and unique fields – 45 years.

The period of production may be extended to the term of up to 25 consecutive years.

The territory of the plot(s) for exploration under a single hydrocarbons exploration contract cannot exceed 2,400 blocks.

The competent authority may early terminate a subsoil use contract in accordance with unilateral procedure in instances as set out below:

- entry into force of a court judgment prohibiting subsoil use activities;
- conducting subsoil use operations with respect to hydrocarbons without respective expert examination of the project documents approved by a subsoil user, with respect to which the subsoil user obtained relevant positive opinions stipulated by the RK legislation;
- violation of requirements to obtainment of a permit for the subsoil use right transfer entailing a threat to national security.

The competent authority may also early terminate a subsoil use contract in accordance with unilateral procedure, provided the subsoil user fails to eliminate within the established period:

- one of violations specified in the competent authority's notice;
- more than two violations of other obligations established by a subsoil use contract.

Uranium mining.

Uranium mining falls within special regulation. Right for uranium mining is granted to national companies only; however, it is not prohibited to subsequently transfer the right for uranium mining to companies that are not national companies.

The subsoil block granted to a national company on the basis of direct negotiations under a single contract for uranium mining cannot exceed in the aggregate 200 blocks.

Transfer of subsoil use right to other subsoil users. The legislation regulates not only the transfer of subsoil use right, but also of the subsoil use right-related objects, which include participation interests (shareholdings):

- in a subsoil user legal entity; and
- in a legal entity that has the possibility to directly or indirectly define such subsoil user's decisions, if the legal entity's principal activities are associated with subsoil use in Kazakhstan.

The transfer of subsoil use right is allowed only on consent of the competent authority, which is issued for each individual case of such transfer. A transaction consummated without the competent authority's consent is deemed null and void.

This rule has some exceptions, for instance, no consent is required to transfer the subsoil use right and/or objects related thereto to a subsidiary in which at least 99% participation interest (shareholding) belongs to the subsoil user, unless such subsidiary is registered in a tax haven. Similarly, no consent is required to transfer the subsoil use right and/or objects related thereto to a person, which directly or indirectly controls more than 99% participation interest (shareholding) in a subsoil user or the owner of the subsoil use right-related object.

The transfer of subsoil use right on the basis of universal succession is possible in case of legal entity reorganization and will require no consent, if more than 99% participation interest (shareholding) of the reorganized legal entity belong to one person.

The subsoil use right (share therein) is transferred by way of reissuing a subsoil use license or introducing amendments into the subsoil use contract accordingly.

7.4. State's Pre-emptive Right to Acquire Subsoil Use Rights

The state has the pre-emptive right to acquire the subsoil use right (a part thereof) being alienated and/or the objects related to the subsoil use right pertaining to a strategic subsoil block, including shares and other securities being the objects related to the subsoil use right pertaining to a strategic subsoil block, which are put into circulation on the established securities market.

The list of strategic subsoil blocks is approved by the Government of the Republic of Kazakhstan. In case of transferring the subsoil use right to a strategic subsoil block, one must obtain the state's waiver of the pre-emptive right in addition to a permit to alienate the subsoil use right and/or the objects related to the subsoil use right.

7.5. Local Content Requirements

Kazakhstan is now largely supporting local producers, which finds reflection in the provisions of the Subsoil Code and many bylaws.

The local content obligations are *mandatory* conditions for subsoil use contracts and licenses represent concrete quantitative indicators. The minimum local content must be at least 50%.

The following subsoil user's local content obligations are secured by the Subsoil Code:

- tender-based engagement of local work and service providers during subsoil use operations, if such services meet the standards, price and quality characteristics of similar services provided by nonresidents, this provision being applicable to goods if conducting activities under contracts concluded prior to 1 January 2015; and
- giving preference to local personnel during subsoil use operations, and financing their training and retraining.

The procedure for goods, work and services acquisition by subsoil users is fairly detailed by legislation and is aimed, among other things, to support local producers. For example, when summarizing tender results, the tender price offered by local producers is conditionally decreased by 20% (provided their goods, work and services meet the tender and technical regulation requirements).

7.6. Environmental Requirements in Subsoil Use

The environmental basis for conducting subsoil use operations is a positive opinion of the state environmental expert review of project documentation and the environmental permit.

Subsoil user must submit for state environmental expert review all pre-project and project documentation, which must include the contemplated activities' environmental impact assessment and contain an "Environmental Protection" section.

In addition, when conducting subsoil use operations it is required to observe a number of environmental requirements established by the environmental and subsoil use legislation.

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8. LAND REGULATION

8.1. State and Private Land Ownership

The key act governing land relations in Kazakhstan is the RK Land Code adopted on 20 June 2003.

The land in Kazakhstan is state-owned. In certain established cases, land plots may also be privately owned.

Kazakh non-state companies may privately own land plots granted for agricultural commodity production, forestation or construction development purposes, or with built-up production and non-production (including residential) buildings or building compounds, including land intended for the buildings maintenance in accordance with their designation.

Currently there is a moratorium on granting the right of private ownership to agricultural-designation land plots, effective until the end of 2021.

Foreign citizens, stateless persons and foreign (non-state) companies may privately own only land plots designated for construction development or with built-up production and non-production (including residential) buildings or building compounds, including land intended for the buildings maintenance.

Land plots located in the Kazakhstan's near-border strip territory cannot be granted into private ownership or for temporary land use.

Foreign citizens, stateless persons or the RK citizens married to foreign citizens or stateless persons, including foreign legal entities and the RK legal entities with foreign participation, cannot own the land plots located in the RK border zone under the right of ownership/right of temporary land use.

8.2. Land Use Right

Land may also be held by persons based on the right of land use (permanent or temporary, paid or free-of-charge, alienable or inalienable). It is allowed to alienate and sublease land plots held based on the temporary land use right (with certain exceptions), subject to redemption of the land use right from the state.

Land plots may be granted to some categories of state land users based on the **right of permanent land use**. The right of permanent land use cannot belong to foreign land users.

The right of temporary land use may be paid or free-of-charge.

The right of temporary free-of-charge land use is normally granted for up to 5 years (with some exceptions). Land plots under the right of temporary free-of-charge land use cannot be alienated or transferred for secondary land use. Land plots may be granted to Kazakh individuals and legal entities based on the right of temporary free-of-charge land use in cases provided for by legislation, including in the framework of a concession agreement or a public-private partnership agreement.

The right of temporary paid land use (lease) may be short-term (up to 5 years) or long-term (from 5 to 49 years) and is granted to individuals, non-state Kazakh companies and international organizations, as well as to foreign companies, foreign citizens and stateless persons.

In 2015, the land legislation underwent amendments pursuant to which the up to 25-year right of temporary paid land use for the purposes of commodity agricultural production may be granted to foreign citizens, stateless persons, foreign legal entities and Kazakh companies that are more than 50% foreign-owned.

However, due to mass public protests, in July 2016 the above amendments were put under moratorium till the end of 2021.

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9. CURRENCY REGULATION

9.1. *Participants in Currency Relations*

Pursuant to the RK currency legislation, specifically, the RK Law on Currency Regulation and Currency Control of 13 June 2005, participants in currency relations are subdivided into the **RK residents** (RK nationals, foreign citizens and stateless persons holding an RK permanent residence permit, Kazakh companies and their structural subdivisions, and RK diplomatic, trade and other official representations) and **nonresidents** (foreign citizens, foreign companies and their branches/representative offices, and international organizations).

Settlements between residents may be effected only in the national currency – tenge (except for certain statutory exceptions), while settlements between residents and nonresidents may be in any currency.

Nonresidents may, without limitations, receive and transfer dividends, interest and other income received on deposits, securities, loans and other currency operations with residents performed in accordance with the procedure established by legislation.

The current Law No. 57-III of the Republic of Kazakhstan "On Currency Regulation and Currency Control" dated 13 June 2005 (amended as of 2 July 2018) will lose its force starting 1 July 2019 in accordance with the RK Law No. 167-VI of 2 July 2018 (the New law on the currency control). Under the New law on the currency control branches/ representative offices of foreign companies located in Kazakhstan (except for some exceptions) will be considered as RK residents. The New law on the currency control also amends the currency regimes.

9.2. *Currency Control*

The principal currency control authority in Kazakhstan is the RK National Bank.

The currency control is exercised in the following regimes: **registration** of currency operations and **notification** about currency operations.

The RK National Bank establishes transaction amount thresholds, exceeding which the currency contracts are subject to registration, and the conditions under which currency contracts do not require registration, but may, however, fall within the notification regime.

Registration means that the resident is to register a relevant currency contract with the RK National Bank and subsequently be submitting the data on the actual funds movement under the currency contract and quarterly reporting.

Registration is required in case of currency operations between residents and nonresidents in the form of financial and commercial loans for the period more than 180 days, direct investments, payments for the purposes of acquiring exclusive rights to intellectual property, or payments and transfer of other property as a discharge of obligations of a joint operations participant.

The RK National Bank registers currency operations if:

- the amount of a currency operation contemplating the incoming of property (funds) to the RK or the arising of a resident's obligations to return property (funds) to a nonresident exceeds the equivalent of USD 500,000; or
- the amount of a currency operation contemplating the transfer of funds (property) from the RK or the arising of a resident's claims to a nonresident to return property (funds) exceeds the equivalent of USD 100,000.

Setting up of branches/representative offices and their funding by the parent company is not an investment/crediting and does not require registration.

Branches/representative offices of foreign companies operating in the RK territory for more than one year and active in areas defined by legislation are subject to currency monitoring performed by the RK National Bank via collection of information on the branch/ representative office's currency operations.

The **notification** regime means the submission of information on a currency contract, in the format and within the deadlines established by the RK National Bank, by the resident participants in the currency operations, by authorized banks or by professional securities market participants performing currency transactions on behalf of their clients, and subsequent submission of information on the performed transactions and changes in the currency contract.

The following currency operations between residents and nonresidents are subject to notification:

- acquisition of immovable property;
- transfer of any assets into trust management;
- certain banks' own operations;
- securities acquisition and placement;
- operations with derivative financial instruments.

Resident legal entities are to notify about opening a bank account (including savings account) with a foreign bank.

The notification regime applies the same thresholds as established for registration and an additional condition: the amount of payment or money transfer by a resident to a nonresident, or by a nonresident to a resident in operations with derivative financial instruments (net of payment for the underlying asset) or in settlements associated with export (import) of work or services, must be in excess of USD 100,000.

If a resident becomes a party to a currency contract falling under the registration/notification regime as a result of a claim/debt assignment, such resident must apply for registration/ notify the RK National Bank within the established deadlines.

Residents fall under the mandatory requirement to repatriate national and foreign currency, which they receive as payment for the export of goods (work, services), or which they transfer to nonresidents as settlement for the import of goods (work, services) in case the nonresidents fail to perform or incompletely perform their obligations within the transaction-stipulated deadlines.

The RK National Bank establishes uniform rules and conditions for the residents to obtain the **contract record numbers** for import and export contracts and the export-import control procedure intended to ensure residents' compliance with repatriation requirements, as well as the transactions threshold amount, which, if exceeded, requires obtaining the contract record number. The currency repatriation regime does not apply to branches/representative offices of foreign companies.

Nonresidents may buy and sell foreign currency on the internal currency market without limitation on purposes (specifying, however, the purpose of the sale or purchase), and without presenting the currency contract or other documents substantiating the purpose of the sale and purchase of foreign currency. In case of purchasing foreign currency for national currency

in an amount exceeding the equivalent of USD 100,000, the RK legal entity, which is not an authorized bank or authorized organization, is to attach to the application a copy of the currency contract under which the foreign currency is being purchased and/or other documents confirming the purpose of purchase and the amount of foreign currency.

The unified principles of the EAEU currency policy are defined by the Treaty on the Eurasian Economic Union, dated 29 May 2014.

9.3. Currency regimes under the New law on the currency control

The New law on the currency control provides that currency transactions between RK residents and non-residents on capital transfer will be subject to registration by receiving a transaction identical number depending on amount of the transaction.

The following currency operations between residents and nonresidents will be deemed as capital transfer transactions:

- financial loans;
- capital subscription;
- transactions with securities, shares and derivatives;
- acquisition of shares in capital of a company;
- payments for the purposes of acquiring of immovable property and exclusive rights to intellectual property
- transfer of any assets into trust management or trust;
- payments and transfer of other property as a discharge of obligations of a joint operations participant;
- transfer of cash, securities or high carat gold free of charge; and
- transfer of cash or financial instruments received under a transaction concluded by a professional participant of the securities market at the request of its client for the purpose of cash accounting and custody.

Since 1 July 2019 the RK residents entering into a currency transaction on capital transfer must receive the transaction identical number, if the cost of the assets to be provided under such transaction or the amount to be paid or repaid thereunder by or to the RK resident exceeds USD 500,000 (or its equivalent in any other currency). If the capital transfer transaction between the RK resident and non-resident contains no reference to an amount of the transaction, such currency transaction will be subject to registration in any way. RK banks are prohibited to make payments and transfers under contracts requiring a transfer identical number without receiving such number.

The RK residents must apply to the RK National Bank for the transaction identical number prior to commencing fulfilment of the obligations under the capital transfer transaction by one of the parties thereto, i.e. prior to making a payment or transfer the assets (if any). The RK National Bank provides the transfer identical number within five (5) business days upon receipt of all necessary documents from the RK resident.

The New law on currency control provides for the list of certain currency transactions which are not be subject to registration. This list includes transactions between participants of AIFC

entered into in the territory of AIFC, own currency transactions of the RK banks, insurance companies, brokers, dealers, managing companies, transactions with RK state securities, and some others.

Currency transactions in amount exceeding USD 50,000 (or its equivalent in any other currency) will be subject to notification. Solely RK banks must notify the RK National Bank about them.

Since 1 July 2019 RK legal entities also will receive an identical number for their accounts opened in banks abroad of Kazakhstan. Such requirement also applies to branches and representative offices of RK legal entities. The RK National Bank provides the identical number to the bank account within five (5) business days upon receipt of all necessary documents from the RK resident.

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10. SECURITIES MARKET

The RK Law on Securities Market of 2 July 2003 is the key act governing the securities market in Kazakhstan. The local securities market is subdivided as follows:

- organized market – transactions with securities are executed in accordance with the trade organizer's internal documents;
- unorganized market – transactions with securities are executed without observing the requirements established by the trade organizer's internal documents, i.e. OTC transactions.

The RK National Bank regulates and supervises the financial market, including the securities market, and financial organizations.

All transactions with securities in Kazakhstan are subject to mandatory state registration. Starting 1 January 2019, the only organization to maintain the system of securities holders' registers is the Central Securities Depository.

Kazakhstan issuers may offer their securities in the territories and on stock exchanges of foreign states, subject to obtaining the RK National Bank's permit and meeting the established conditions unless cases when at least 20% of such securities are concurrently offered in the territory of Astana International Finance Centre (AIFC). The most important of these conditions is the requirement to concurrently offer the securities on the domestic stock market, which is one of the measures to promote the local securities market development.

Kazakhstan law also does not provide for any prohibition for its residents to invest in foreign securities or other financial instruments abroad of Kazakhstan. However, under the RK Law on the Securities Market only qualified investors (such as banks, insurance companies and other entities holding the license on activity on the financial market and the securities market) have the right to purchase certain types of securities and financial instruments (Restricted instruments). No securities and financial instruments issued by non-Kazakhstan residents under foreign law and derivatives will be considered as Restricted instruments, if they are listed or admitted to trading on a Kazakhstan or foreign stock exchange or commodity exchange. Separate regulations are established with respect to Islamic securities. The key principles of Islamic finance are as follows:

- the issuer may not accrue interest as a percentage of the Islamic securities value and guarantee income on Islamic securities;
- the funds received as a result of issue and placement of Islamic securities cannot be used to finance activities related to the production of, or trade in, tobacco, alcohol, weapons, ammunition, or to gambling business, etc.

Islamic securities may be paid only in cash. Until an offered Islamic security is paid in full, the issuer may not issue order to charge it to the acquirer's personal account.

The Treaty on the Eurasian Economic Union of 29 May 2014 defines the key goals and principles of the agreed securities markets regulation. In order to attain these goals and principles, by 2025, the EAEU member states will harmonize their legislation in the financial market area in line with the EAEU international treaty and the Protocol on Financial Services.

At the moment, the main Kazakhstan's securities trading platform is the Kazakhstan Stock Exchange (KASE), whose members include Kazakhstan's leading banks and investment companies, and brokers.

Astana International Exchange (AIX) was formed in 2017 as one of the main structures of the AIFC which was established in 2015 under the RK President's decree on the AIFC dated 19 May 2015. . The AIX should become the most technologically advanced in the region. The AIX's shareholders include AIFC, Goldman Sachs, Shanghai Stock Exchange, the Silk Road Fund and NASDAQ, which also provides AIX's trading platform. The AIX rules and regulations are placed on its web-site (www.aix.kz).

The AIX has launched in November 2018. Such securities as shares and GDRs of NAC Kazatomprom JSC, bonds of Kazakhtelecom JSC and Kazakhstan Temir Zholy JSC are listed on AIX. On the 14th November 2018, the first trading on AIX took place. At the present time such securities as shares and GDRs of NAC Kazatomprom JSC, euronotes of the RK Ministry of finance and notes of Kazakhstan Temir Zholy JSC are admitted to trading on AIX.* * *

11. PERMITS AND NOTIFICATIONS

In order to conduct certain types of activities or operations defined by the RK Law on Permits and Notifications adopted on 16 May 2014, it is necessary to obtain a relevant **permit** or submit a **notification** to the authorized agencies.

11.1. Categories, Classes and Types of Permits

Kazakhstan issues **licenses** (first category permits) and **other permits** (second category).

Licenses are for conducting activities or operations in certain business areas: industry; oil and gas; use of nuclear power and cosmic space; transport; TV and radio broadcasting, and other.

Special types of licenses apply to export and import:

- **general license** – a license issued to foreign trade participants based on a EAEU member state's resolution and entitling to export or import a certain type of goods within certain quantities determined in the license;
- **exclusive license** – a license granting a foreign trade participant an exclusive right to export or import a certain type of goods; and
- **one-time license** – a license issued to a foreign trade participant based on a foreign trade agreement (contract) and entitling to export or import licensed goods within certain quantities.

11.2. Permit Issuance Conditions and Procedure

To be issued a permit, the applicant must meet the established qualification and permitting requirements.

Permits are issued on equal grounds and on equal terms, both to the RK residents and to foreign citizens, stateless persons and foreign companies that conform to requirements. Some types of activities may be performed only by the RK residents.

Some licenses are alienable and may be transferred by the licensee to another individual or legal entity.

Permits are valid in all Kazakhstan territory, except for the cases expressly provided for by legislation.

In order to conduct or terminate certain types of activities (operations) it is necessary to submit **notification** to the relevant authorized agencies.

To support private business development, Kazakhstan has been lately shortening the list of the types of activities or operations requiring permits and lightening the permitting and notification procedure load on entrepreneurs.

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12. TAXATION

12.1. General Provisions

Starting 1 January 2018, the key taxation provisions are governed by the new RK Tax Code No. 120-VI of 25 December 2017, which provides for the types of taxes and charges applicable depending on the presence of the taxable items and, in certain cases, on the type of performed activities.

Each type of taxes has a determined taxable item, amount of applicable tax rate and payment deadlines. Also provided for are different types of one-time fees (for state registration of legal entities, licensing fee, etc.) and charges (for environmental emissions, for outdoor advertising, etc.).

The Code has for the first time secured the principle of good faith actions (omissions) of taxpayers (tax agents) aimed to perform tax obligations, which does not allow deriving of profit by a taxpayer (tax agent) from illegal actions for the purpose of preferential tax treatment (tax saving) and tax reduction. The said principle also covers the tax authorities and obligates them to substantiate their arguments and disclose the circumstances of violating the tax legislation by a taxpayer. A violation must be described in the course of a tax inspection. All inaccuracies and unclear points of the tax legislation are interpreted in the taxpayer's (tax agent's) favor in the event of considering appeals against notices.

Kazakhstan has entered into bilateral international treaties for the avoidance of double taxation and reduction of income tax and capital tax rates with more than 50 states. The treaties apply to the income (corporate and individual) tax and property tax.

12.2. Resident and Nonresident Income Taxation

Taxation of nonresident's income depends on whether the nonresident has a permanent establishment in Kazakhstan.

Recognized as nonresident's **permanent establishment** is a permanent place of activities through which the nonresident performs, in full or in part, its business activities, including activities performed via an agent, for example: place of activities associated with the production, supply or sale of goods; place of activities associated with operation of game machines, computer networks and communication channels; place of management, department, bureau, office, room, agency, factory, studio, workshop, laboratory, shop, warehouse, etc.

As applied to the provision of services and performance of work, recognized as a permanent establishment is the place of services provision or work performance by employees or other personnel hired by the nonresident for such purposes, if the activities of such kind continue in the territory of Kazakhstan for more than 183 calendar days within any consecutive 12 month period of the date of commencement of entrepreneurial activities under a single project or related projects.

The branches/representative offices of foreign companies are also referred to nonresident's permanent establishments. A subsidiary of nonresident legal entity is deemed to be a permanent establishment, if its activities meet the dependent agent criteria.

Recognized as RK residents for taxation purposes are individuals permanently residing in Kazakhstan, or those not permanently residing, but whose center of vital interests is located in Kazakhstan.

An individual is recognized as permanently residing in Kazakhstan for a current tax period, if he/she is staying in the RK for at least 183 calendar days over any consecutive twelve-month period ending in the current tax period.

The center of vital interests is deemed to be located in the RK, if the following conditions are met concurrently:

- an individual is an RK citizen or holds an RK residence permit;
- an individual's family and/or close relatives reside in the RK;
- an individual and/or his/her family members own or otherwise hold immovable property in the RK, which is available at all times for the individual and/or his/her family members to reside.

12.3. Corporate Income Tax (CIT)

The CIT payers include Kazakh legal entities and foreign companies performing activities in Kazakhstan via a permanent establishment or receiving income through sources in the RK. The general CIT rate is 20% of the taxable income amount.

The CIT-taxable items are as follows:

- taxable income;
- income taxable at the source of payment; and
- net income of the foreign company operating in the RK via a permanent establishment.

In addition to CIT, the net income of foreign company operating in the RK via a permanent establishment is taxable at 15%.

The CIT on taxable income of foreign companies operating in Kazakhstan without forming a permanent establishment is withheld at the source of payment by the tax agent, i.e. the person paying the income. Foreign companies' permanent establishment-unrelated income from Kazakh sources is taxable at the rates from 5% to 20%.

The payment procedure and rates of the CIT withheld at the source of payment from nonresident's income largely depend on whether there is a double taxation treaty between Kazakhstan and the relevant state.

The RK Tax Code provides for tax preferences for certain categories of local legal entities.

12.4. Individual Income Tax (IIT)

Individual income tax payers are individuals possessing taxable items in the form of:

- income taxable at the source of payment; or
- income not taxable at the source of payment.

The income is IIT-taxable at the rate of 10%, except for income in the form of dividends, which are taxable at 5%. The tax on income taxable at the source of payment is to be calculated, withheld and paid by tax agents.

12.5. Value Added Tax (VAT)

The VAT payers are Kazakh companies, nonresidents performing activities in Kazakhstan via branches/representative offices, and persons importing goods into the RK territory that got VAT-registered.

The items subject to VAT are the taxable turnover of goods (work, services) and taxable import. If the turnover of the persons mentioned above exceeds over a year the minimum turnover, such persons must get VAT-registered.

The minimum turnover is as follows:

- From 1 January 2018 – 30,000 MCI.

The VAT rate is 12%. The RK Tax Code establishes a list of goods (services) whose import and export is exempt from VAT.

The amounts and payment procedure for uniform rates of customs duties, taxes and overall customs payment are established by the customs legislation of the Eurasian Economic Union (EAEU) and/or by the customs legislation of the RK. The temporary export of goods from the RK territory to the territories of the EAEU member states, which will further be imported into the RK without changing their properties and characteristics, will not constitute the sales turnover.

The VAT on goods imported into the RK territory from the territory of another Customs Union member state is assessed by the customs service authorities at the rate of 12% applicable to the amount of taxable import.

12.6. Excise Tax

Subject to excise tax are the goods produced in the territory of Kazakhstan and imported into Kazakhstan, including:

- all kinds of ethyl alcohol;
- alcohol products;
- tobacco products, products with heated tobacco, and nicotine-containing liquids for use in electronic cigarettes;
- gasoline (except for aviation gasoline);
- diesel fuel;
- certain types of motor vehicles;
- crude oil and gas condensate; and
- alcohol-containing medical designation products registered in Kazakhstan as a medication.

The excise tax rates are established as an absolute amount per unit of measure in physical terms, with respect to each type of products.

12.7. Export Rent Tax

This tax applies to individuals and legal entities selling crude oil, crude oil products and coal for export, except for subsoil users exporting the quantities of crude oil and gas condensate produced under subsoil use contracts.

12.8. Subsoil User Taxes and Special Charges

Subsoil user must keep separate tax accounting to assess tax obligation in relation to activities carried out under each concluded subsoil use contract and in accordance with provision of the RK Tax Code.

As applied to contractual activities, separate tax accounting must be kept with respect to the below taxes and payments to the budget, including other taxes and payments to the budget assessed according to the procedure different from that established by the Tax Code, on the basis of the tax regime of subsoil use contracts determined by the provisions of the RK Tax Code.

1) **Subsoil User's Special Charges are as follows:**

- **Signature bonus** – subsoil user's one-time fixed payment for acquiring the right to use subsoil in the contract area, and payment in case of the contract area expansion.

The starting amount of signature bonus is established individually for each executed subsoil use contract, in accordance with the RK Tax Code.

- **Historical costs charge** – a fixed subsoil user's payment to compensate for the aggregate costs incurred by the state for the geological study of the contract area and deposit exploration prior to entering into the subsoil use contract. Starting 1 January 2018, the subsoil users who obtained licenses after 31 December 2017 are exempted from the payment of historical costs charges in accordance with the RK Code on Subsoil and Subsoil Use. The amount of historical costs is calculated by the authorized state agency.

- **Commercial discovery bonus.** Cancelled since 2018.

2) Mineral Extraction Tax

Mineral extraction tax is payable by subsoil users separately for each type of minerals, oil, groundwater or therapeutic muds extracted in the RK territory. In the course of activities under subsoil use contract, the monetary form of mineral extraction tax may be replaced by an in-kind form, upon an RK Government resolution.

3) Excess Profit Tax

This tax is payable by subsoil users with respect to activities conducted under each particular subsoil use contract, except for certain established cases. For example, the excess profit tax was cancelled for the mining sector in 2018.

The taxable item is the part of net income for each individual contract over the tax period, which exceeds the amount equal to 25% of subsoil user's amount of deductions determined (net income and deductions) for the purposes of excess profit tax calculation.

The excess profit tax is payable by subsoil users according to a sliding scale (the higher the ratio between the aggregate annual income and deductions, the higher the rate). The tax rate ranges from 10% to 60%.

4) Corporate Income Tax

When assessing the corporate income tax generally with respect to subsoil user's activities, not to be considered are the losses incurred under an individual subsoil use contract, which the subsoil user may compensate only on account of income received from activities under such individual subsoil use contract during subsequent tax periods pursuant to the provisions of the RK Tax Code.

5) Alternative Subsoil Use Tax

In instances established by the tax legislation the subsoil user legal entities may apply an alternative subsoil use tax instead of paying historical costs charges, mineral extraction tax and excess profit tax.

Such right belongs to subsoil users who concluded contracts for the production and/or combined exploration and production of hydrocarbons on the continental shelf of the Republic of Kazakhstan and/or contracts for the production and/or exploration and production of hydrocarbons at the fields meeting the characteristics specified in the RK Tax Code.

12.9. Social Tax

The payers of social tax are Kazakh legal entities and foreign companies operating in Kazakhstan via a permanent establishment, or via a branch/representative office that does not give rise to the formation of a permanent establishment according to a double taxation avoidance treaty. The taxable item are employer's expenses paid to employees (resident and nonresident), and foreign personnel income, including employer's expenses paid for the purpose of training or advanced training of employees for production purposes, compensatory payments in the event of the employment contract cancellation on the employer's initiative, and compensatory payments for the unused labor leave. Starting 2018, the general rate of social tax is 9.5%.

12.10. Land Tax

Individuals, legal entities and individual entrepreneurs holding land plots (or a land share, in case of joint shared ownership over a land plot) based on the right of ownership, right of permanent land use or right of primary free-of-charge temporary land use, are the payers of land tax.

The taxable base for determining the land tax is the land plot's area. The base rates of land tax are established by the Tax Code and differ depending on the soil quality, location, water supply and other parameters of the land plot.

12.11. Vehicle Tax

This tax applies to individuals, legal entities and individual entrepreneurs holding certain types of transport vehicles based on the right of ownership, right of economic jurisdiction or right of operating management.

The RK Tax Code establishes MCI-based vehicle tax rates, which depend on the type of the transport vehicle, its designation, engine volume and year of manufacture.

12.12. Property Tax

1) Tax on Property (Buildings, Constructions) of Legal Entities and Individual Entrepreneurs

The tax payers are:

- legal entities (Kazakh or foreign) holding the taxable item based on the right of ownership, economic jurisdiction or operating management in the RK territory;
- individual entrepreneurs holding the taxable item based on the right of ownership in the RK territory; and
- concessionaires holding, based on the right of possession and use, a taxable item, which is the subject of concession under the concession agreement.

The general tax rate is 1.5% of the annual average value of the taxable items; however, the RK Tax Code also provides for other rates, depending on the taxpayer's status and type of activities.

2) Individual Property Tax

The tax is payable by individuals who own dwelling places, buildings, dacha buildings, garages and other constructions, structures or premises.

12.13. Fixed Tax

The payers of fixed tax are individual entrepreneurs and legal entities rendering services using no-prize game machines, skittle or bowling playing alleys, billiard tables, etc.

The rates of fixed tax for all taxpayers are established by local representative authorities.

12.14. Gambling Business Tax

This tax applies to casino, gambling machines, sweepstake and bookmaker services. The tax rates are MCI-based and established with respect to taxable entities.

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13. CUSTOMS REGULATION

13.1. General Provisions

Kazakhstan, as well as Russia, Belarus, Armenia and Kyrgyzstan are currently the members of the Eurasian Economic Union enabling the freedom of movement for goods, services, capital and workforce and the coordinated, concerted or unified policy in the sectors of economy. The territories of Kazakhstan, Russia, Belarus, Armenia and Kyrgyzstan constitute a common customs territory in the framework of the Union where unified customs regulations, including the Customs Code and the Unified Customs Tariff, are in effect. The key aspects of unified customs regulation are stipulated by the Treaty on the Eurasian Economic Union and the Customs Code of the Eurasian Economic Union.

13.2. Customs Charges

The following customs fees and duties are payable in the RK when performing customs clearance of goods:

- **customs declaration fee** is KZT 20,000 (approximately USD 50) per one declaration, regardless of the number of declared goods²;
- **import customs duties.** The basis for customs duties calculation, depending on the type of goods and applicable rates, is the *customs value of goods* and/or their *in kind physical characteristics* (quantity, weight, volume or other characteristics). Benefits may be granted in the form of deferral of, or exemption from, or installment of, customs duties payment;
- **export customs duties.** The export customs duties are established by the Order of the Minister of National Economy³ only for a small list of goods (oil and certain petroleum products, ferrous scrap, wool, unprocessed sheep skin and other);
- **import VAT.** In Kazakhstan, the import VAT rate is 12%. In certain cases, exemption from import VAT is granted.

The import subject to VAT includes the customs value of imported goods, subject to the transfer pricing legislation, and the amounts of taxes and customs duties payable to the budget when importing goods to the RK, except for import VAT;

- **excise tax** on certain goods. The excisable goods are ethyl alcohol, alcohol products, tobacco products, products with heated tobacco, nicotine-containing liquids for use in electronic cigarettes, gasoline (except for aircraft gasoline), diesel fuel, crude oil, gas condensate, certain transport vehicles, medicines in the form of alcohol-containing medical products and other goods. The excise tax rates are established by the RK Tax Code or by the RK Government (depending on the types of goods).

² Decree No. 171 of the Government of the Republic of Kazakhstan "On Approval of the Rates of Customs Fees Charged by the State Revenue Authority" dated 5 April 2018.

³ Order No. 81 of the Minister of National Economy of the Republic of Kazakhstan "On Approval of the List of Goods Eligible for the Export Customs Duties, Amounts of Rates and Their Effective Term, and the Rules for Calculating the Export Customs Duties Rates for Crude Oil and Petroleum Products" dated 17 February 2016.

Export of goods from Kazakhstan is subject to zero rate VAT in the event of the goods export fact confirmation.

Also payable in the RK are customs support charges and preliminary resolution fee.

13.3. Customs Procedures

Kazakhstan applies 17 different customs procedures, of which the most commonly used are the *release for domestic consumption* and *temporary importation (admission)* of goods.

Other customs procedures are: customs warehouse, duty-free trade, export, customs transit, free warehouse, etc.

If **released for domestic consumption**, the imported goods acquire the status of EAEU goods and circulate freely in the entire EAEU territory without any customs restrictions.

This procedure implies payment of customs duties and taxes in full and compliance with the established restrictions and prohibitions and domestic market protection measures.

The **temporary importation (admission) of goods** is a customs procedure whereunder the imported goods retain the status of foreign goods. The maximum temporary importation period is 2 years with certain exceptions. Prior to expiration of the said period the goods must be placed under the re-exportation procedure (and later removed) or any other customs procedure applicable in this situation.

The goods temporary importation (admission) procedure implies a full or partial exemption from import customs duties and taxes. The list of goods falling under full exemption is determined by the RK international agreements and/or by the Eurasian Economic Commission⁴.

The goods beyond this list fall under partial exemption at 3% per month of the amount of the customs duties and taxes, which would be payable in case of release of goods for domestic consumption.

13.4. Customs Declaration

The goods imported by legal entities into the customs territory of the Eurasian Economic Union are subject to customs declaration.

Preliminary, incomplete, periodic or temporary customs declaration may be allowed in established cases. Certain goods may be released before filing a customs declaration.

The time required for release of goods cannot exceed 4 hours from the moment of registering a customs declaration, however, in certain instances such period may be greater or extended.

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⁴ Resolution No. 109 of the Eurasian Economic Commission Council "On Certain Issues of Applying Temporary Importation (Admission) Procedure" dated 20 December 2017 (Moscow).

14. PUBLIC-PRIVATE PARTNERSHIP

Public-private partnership (PPP) is currently governed by the RK Law on Public-Private Partnership dated 23 November 2015. Concession projects being a variation of PPP are governed by the special RK Law on Concessions dated 7 July 2006. General PPP provisions are also included in the RK Entrepreneurial Code dated 29 October 2015.

PPP projects may be subdivided into national and local projects. Such subdivision depends on the type of ownership (national or communal) over property originating as a result of implementing a PPP project, as well as the beneficiaries of a specific PPP project.

The list of PPP projects contemplated for implementation is formed by the central authorized agency for state planning or by local executive agencies and must be placed on a website of a special public-private partnership development center – Kazakhstan Public-Private Partnership Center JSC, which was established in 2008.

Local PPP projects are normally implemented on the basis of model documentation. National PPP projects are implemented on the basis of custom-tailored documentation.

Special category of PPP projects is represented by PPP projects of special significance. The list of such projects is approved by the Government.

PPP projects are implemented in all economy branches (spheres). Facilities included in a special list determined by the RK Government cannot be transferred for the purposes of PPP project implementation. The term of implementing a PPP project may vary from three to thirty years, depending on the project specifics.

A private partner is determined applying the methods, as follows:

- 1) tender, including in accordance with a simplified procedure and applying two-stage procedures. A tender to determine a private partner may be closed with respect to facilities falling within the list determined by the RK Government; and
- 2) direct negotiations.

A private partner may be determined applying a simplified tender only for local PPP projects. A private partner is determined and PPP agreement is concluded under informatization service model in accordance with the RK legislation on informatization.

To partake in a tender or direct negotiations to determine a private partner a potential private partner must meet general qualification requirements, as follows:

- 1) to be legally capable (for legal entities) and be able to act (for individual entrepreneurs);
- 2) to be capable of paying and have no tax debts;
- 3) to have financial and/or material and/or labor resources required to perform obligations under PPP agreement;
- 4) not to be subject to bankruptcy or liquidation procedure; its property, the book value of which exceeds 10% of the value of respective fixed assets, must not be attached, and its financial and economic activities must not be suspended in accordance with the RK legislation; and
- 5) not to be held liable for a failure to perform and/or improper performance of obligations under PPP agreements concluded within the past three years based on a court

judgment, which entered into legal force, on recognition as a bad faith potential private partner.

The RK laws may provide for any additional (special) qualification requirements to potential private partners.

A special regime is established for the PPP projects of special significance. Thus, for example, the RK legislation provides for conclusion of a direct agreement among the public partner, private partner and creditors of the private partner. Such agreement contains, *inter alia*, the creditors' right to claim for replacement of the private partner in certain instances and describes the procedure for replacing the private partner (in concession projects of special significance, a direct agreement also provides for the creditors' right to appoint a temporary manager and determine its authorities).

As per the PPP projects of special significance, in case a private partner is the RK nonresident, arbitration is determined upon agreement of the parties to PPP agreement. With respect to concession projects of special significance, in case at least one of the shareholders (participants) of a concessionaire is the RK nonresident, arbitration is determined upon agreement of the parties. In other words, foreign arbitration may be selected in the above instances upon the parties' agreement with respect to PPP projects and concession projects of special significance.

We mentioned above that Kazakhstan established a special organization on concession matters in 2008, which is Kazakhstan Public-Private Partnership Center JSC. The key subject of activities of this organization is the expert examination review and monitoring of concession projects. Kazakhstan also established Public Private Partnership Advisory Center intended to act as the sole operator of PPP projects at the national and, if necessary, regional levels.

On 10 July 2015, AEQUITAS and Kazakhstan Public-Private Partnership Center JSC entered into a partnership agreement whereunder AEQUITAS is the Center's partner for joint research projects and actions to develop the PPP legislative and institutional framework.

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15. LABOR RELATIONS AND FOREIGN LABOR ENGAGEMENT

15.1. Legal Regulation of Labor Relations

Labor relations in Kazakhstan are regulated by the Labor Code adopted on 23 November 2015, Law on Population Employment of 6 April 2016, Law on Population Migration of 22 July 2011, Law on Professional Unions of 27 June 2014, Law on Minimum Social Standards and Their Guarantees of 19 May 2015 and by other laws and subordinate acts.

Starting 1 January 2015, the EAEU put into effect the provisions of the EAEU Treaty dated 29 May 2014 providing for certain mitigations in the employment area for migrant employees from the Union member states. In November 2015, the norms of national legislation were brought in line with the norms of the World Trade Organization (WTO) agreements.

15.2. Employment Contract

Labor relations between the employee and employer are to be formalized on a mandatory basis by a written **employment contract**, which may be concluded for a certain term or on a termless basis.

Employment contracts with RK nonresidents are not allowed to be executed (with certain exceptions) until the nonresident obtains a work permit, independent job placement permit or labor immigrant permit issued by internal affairs authorities.

15.3. Principal Labor Conditions

The labor conditions must be agreed upon by the parties when entering into the employment contract, and cannot deteriorate the employee's position as compared to the statutory requirements.

The principal labor conditions in the RK are, without limitation, as follows:

- normal work time duration cannot exceed 40 hours per week;
- minimum duration of the principal paid annual labor leave is 24 calendar days;
- maximum allowable duration of overtime work is 2 hours per day, 12 hours per month and 120 hours per year, overtime payable at no less than 1.5 rate or with provision of rest hours, at least one hour per one hour of overtime work;
- engagement to work on days off and holidays is performed in accordance with a special procedure, with at least 1.5 remuneration;
- salary is set and is paid monthly in tenge; and
- employer is responsible for ensuring employees' labor safety conditions.

The legislation also provides for other requirements binding on the parties to the employment contract.

Work on rotation, remote work, work with hazardous labor conditions, work of women, other persons with family obligations, foreign employees of governmental agencies, foreign employees arriving to Kazakhstan under intra-corporate transfer, and work of some other categories of employees is subject to special labor conditions requirements.

Beside this, there are nuances in applying the above requirements, which need to be taken into consideration when entering into the employment contract and in the process of work.

15.4. Use of Foreign Citizens' Labor in Kazakhstan

15.4.1. Foreign Labor Engagement Permit

Foreign employees may enter Kazakhstan for independent job placement or on employer's invitation, including in the framework of an intra-corporate transfer. The following permitting documents are stipulated for foreign labor engagement:

- permit for foreign labor engagement, including in the framework of an intra-corporate transfer, issued to employers (work permit); and
- certificate of qualification compliance in priority sectors (types of economic activities) and occupations in demand therein, issued directly to employees for independent job placement (independent job placement certificate).

In order to determine the conditions and procedure for the issuance and extension of the permits, the following four categories of employees are defined:

- **first category** – CEOs and their deputies;
- **second category** – heads of structural subdivisions who meet the established qualification requirements and qualification standards;
- **third category** – specialists who meet the established qualification requirements and qualification standards; and
- **fourth category** – qualified workers who meet the established qualification requirements and qualification standards.

Foreign employees may be engaged under an intra-corporate transfer only if they are employed by companies organized in the territory of WTO countries and sent to such companies' Kazakh structural subdivisions or subsidiaries; such employees must also belong to certain categories (executive, manager or specialist).

15.4.2. Foreign Citizens Carrying Out Activities without Special Permits

The RK legislation establishes categories of nonresidents who can carry out labor activities without special permit. These include, but are not limited to, foreign employees who are:

- citizens of the EAEU member states;
- CEOs of foreign legal entities' branches or representative offices, and CEOs and their deputies of Kazakh legal entities with 100% foreign participation in the charter capital;
- members of sea, river, air, railway and motor transport crews;
- nonresidents permanently residing in Kazakhstan;
- business immigrants; and
- on a business-purpose trip for a period not to exceed in aggregate 120 calendar days over one calendar year.

15.4.3. Conditions for Foreign Labor Engagement Permits Issuance

The quantity of foreign labor engaged in Kazakhstan is subject to quota (except for foreign labor engagement in the framework of intra-corporate transfer in the sectors of economy determined by the Government, which is performed without a quota). The quota is established by the RK Government on an annual basis as a percentage of labor force, and includes as follows:

- foreign labor engagement quota by the type of economic activities;
- foreign labor engagement quota by the country of origin⁵, provided there exist international treaties on cooperation in the field of labor migration and social protection of migrant workers ratified by Kazakhstan; and
- labor immigrant engagement quota⁶.

The authorized agency issues work permits to employers in case the domestic labor market cannot satisfy the demand for labor and provided the following ratios are met (with some exceptions):

- Kazakhstan citizens must constitute at least 70% of the staff-list number of the first and second category employees;
- Kazakhstan citizens must constitute at least 90% of the staff-list number of the third and fourth category employees.

To be issued work permits (except for an intra-corporate transfer), employers must pay a tax charge according to the rates that differ depending on the types of employer's economic activities and categories of foreign employees.

Work permits for the first category employees (CEOs and their deputies) are issued for the term of 1, 2 or 3 years, for other categories of employees – for a 12-month term, with or without the right of extension, depending on the foreign employee's category.

Permits to foreign employees engaged under an intra-corporate transfer are issued for a maximum term (total period with all possible extensions) not to exceed four years. Beside the need to obtain foreign labor engagement permits, the intra-corporate transfer obligates the employer to also notify the employment authorities within ten days of the moment the foreign employee crosses the RK state border.

Independent job placement certificates are issued to foreign employees in two stages: initially for a term of 3 months and after executing an employment contract with a local employer – for a term not to exceed 3 years.

15.4.4. Conditions for issuance of permits to labor immigrants

Labor immigrants are issued permits provided they are citizens of the countries with which Kazakhstan has entered into agreements on visa-free entry and stay, enabling them to stay in the RK without visas for a period of not less than three months. In order to obtain the permit, they must present to the internal affairs authorities a certificate of clean criminal record, a

⁵ The country of origin means the country whose citizen is the foreigner performing labor activities in Kazakhstan.

⁶ Labor immigrants are immigrants arriving to Kazakhstan as domestic workers to perform work (provide services) within the household of an individual employer based on a respective permit. Such individual employer cannot enter into employment contracts for household work (services) with more than 5 labor immigrants at a time.

medical certificate confirming absence of diseases preventing work in the chosen specialty and a medical insurance covering primary medical care and inpatient care, and make an advance payment of individual income tax for the period specified in the permit application.

Labor immigrant permits are issued for the period specified in the permit application, which may be one, two or three months. The maximum period of labor immigrant's continuous temporary residence in Kazakhstan cannot exceed twelve months. A new permit may be issued to the labor immigrant not earlier than thirty calendar days after the previous permit expiration.

One individual employer cannot enter into employment contracts for household work (services) with more than five labor immigrants at a time.

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16. PROCEDURE FOR FOREIGN CITIZENS' ENTRY AND STAY IN KAZAKHSTAN

16.1. Visa Regime

The migration legislation envisages visa regime for foreign citizens' stay in Kazakhstan. Kazakhstan has concluded bilateral mutual visa-free visit treaties with more than 40 states.

Visas are issued abroad by Kazakh foreign establishments. In the territory of Kazakhstan, visas may be issued by the Consular Service Department of the RK Ministry of Foreign Affairs or by Migration Police Administrations of the RK Ministry of Internal Affairs. In case a properly executed invitation by a Kazakh party is in place, visa may be issued at the local airports.

The visa category, recipient, number of entries, term, period of stay in the territory of the Republic of Kazakhstan and grounds for visa issuance are determined depending on the purposes of stay in Kazakhstan. The most business-relevant visa categories are investor visas, business travel visas and labor activities visas. Visas may be issued for single or multiple entries.

Investor visas are issued to CEOs and managers of foreign companies participating in investments in Kazakhstan's economy, and their family members.

Business travel visas are issued to foreign citizens traveling to, or staying in, Kazakhstan for business purposes and to founders or members of the board of directors; for participation in business negotiations; conclusion of contracts; installation, repair and maintenance of equipment, participation in youth, student or school exchange programs; lecturing or teaching at educational institutions; provision of consulting or audit services; convoying of humanitarian aid; participation in conferences, symposia, forums, exhibitions and concerts, cultural, scientific, sports and other events; and participation in meetings, organizations, round tables, and experts meetings.

Labor activities visas are issued to foreign citizens traveling to Kazakhstan in order to work, if they have a work permit (visas issued both to foreign employees and their family members coming with them) or an independent job placement certificate; or to perform entrepreneurial activities (visas issued to business immigrants).

A simplified procedure for obtaining Kazakh visas is envisaged for certain categories of individuals, including citizens of 48 developed countries (USA, Canada, United Kingdom, Japan, Israel, Denmark, Australia, Bulgaria, Norway, Poland, Singapore, Spain, France, Germany, Korea, and other) who can receive short term RK visas without invitation (visa support).

Moreover, the citizens of 46 countries that demonstrated the highest investment activity in Kazakhstan (these are: Commonwealth of Australia, United States of America, Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, United Arab Emirates, Federal Republic of Germany, Hellenic Republic, Kingdom of Denmark, New Zealand, Japan, State of Israel, Republic of Ireland, Republic of Iceland, Kingdom of Spain, Italian Republic, Canada, Republic of Cyprus, Republic of Korea, Republic of Latvia, Republic of Lithuania, Grand Duchy of Luxembourg, Hungary, Malaysia, Republic of Malta, United Mexican States, Principality of Monaco, Kingdom of the Netherlands, Kingdom of Norway, Republic of Poland, Portuguese Republic, Romania, Republic of Singapore, Slovak Republic, Republic of Slovenia, Republic of Turkey, United Kingdom of Great Britain and Northern Ireland, Republic of Finland, French Republic, Republic of Croatia, Czech Republic, Republic of Chile, Swiss Confederation, Kingdom of Sweden, and Republic of Estonia) are allowed visa-free entry into Kazakhstan, if their term of stay does not exceed 30 calendar days. A longer stay requires issuance of business or investment visas. During their stay in the RK territory, the citizens of these

countries cannot engage in labor, missionary, or any other remunerable activities in accordance with the legislation of Kazakhstan.

In 2019, the 72-hour visa-free regime to enter, stay and exit from Kazakhstan is established for the citizens of the People's Republic of China and the Republic of India flying by the Kazakhstan airlines (subject to availability of valid air tickets of local air companies) to third countries through the international airports of Nur-Sultan and Almaty. This category of foreign citizens is to be registered by the Border Service of the RK National Security Committee at the state border checkpoints of the country, followed by the issuance of migration cards specifying the time of crossing the RK state border.

16.2. Foreign Citizens Passport Registration and Travel Procedure

Foreign citizens temporarily staying in Kazakhstan must register at the place of their temporary or permanent accommodation within 5 calendar days of the date of crossing the RK state border. The foreign citizens are recorded by way of their passport registration. Exception to this rule are the citizens of the EAEU member states who may stay in the RK territory without registration for up to 30 calendar days, and having registered – for up to 90 days from the date of entry into the RK territory.

The registration is issued for a period not to exceed the period of validity of the foreign citizen's passport and visa. Passports of foreign citizens holding multiple-entry visas are registered for the period of their actual stay in the RK. Foreign citizens may be exempt from passport registration based on Kazakhstan legislative acts and international treaties.

Normally, registration is carried out by internal affairs authorities upon the foreign citizen's arrival to Kazakhstan; however, in certain instances, it may be carried out by the national security authorities at the RK state border checkpoints (for foreign citizens from the abovementioned 48 developed countries and from 46 visa-free countries that demonstrated the highest investment activity in Kazakhstan), or online by the inviting company by entering information into the Berkut Unified Information System visa-and-migration portal at the e-Government website (egov.kz) using personal digital electronic signature of the inviting person.

In addition, the inviting company is obligated to inform the internal affairs authorities about the immigrants staying with them within 3 business days of the day of their arrival. These deadlines start to calculate from 00:01 AM of the day on which the immigrant crosses the RK state border or arrives at the inviting person.

Foreign citizens may freely travel in the territory of Kazakhstan open for visits by foreign citizens. In case a foreign citizen changes his/her place of temporary accommodation in Kazakhstan, the inviting legal entity or individual must accordingly notify the internal affairs authorities within 5 days in writing. In case of changing the permanent or temporary place of accommodation, the obligation to accordingly notify the internal affairs authorities lies both with the inviting person (within 3 business days) and the immigrant himself, who must re-register with the internal affairs authority at the new place of accommodation within 5 calendar days.

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17. PERSONAL DATA AND PROTECTION THEREOF

17.1. General Provisions

The issues of personal data and their protection in Kazakhstan are regulated by the 2013 Law on Personal Data and Protection Thereof, 2015 Law on Informatization and other regulatory legal acts. The key purport of legislation in this area is to ensure protection of human and civil rights and freedoms in the course of personal data collection and processing.

Personal data are data relating to a certain individual (the subject), which are fixed on an electronic, paper and/or other tangible medium.

Personal data (including those placed on electronic information resources) are subdivided, according to their accessibility, into public-access data and restricted-access data. The list of personal data is independently determined by the **owner (operator) of the personal data containing base** (a company, individual or governmental agency) in a volume necessary and sufficient to attain the pursued objectives and proceeding from the purposes of such data collection.

The list of individual personal data included in state electronic information resources is approved by Kazakhstan Government. The owners (operators), as well as third parties gaining access to restricted-access personal data, must ensure their confidentiality.

Personal data are to be collected and processed, including with the use of information systems, on consent of the subject or his/her legitimate representative, except for certain cases, which mostly relate to public interest protection.

Personal data must be stored by the owner (operator), or a third party, in a database to be located in the RK territory.

Personal data are transferred to the territory of foreign states only in case such states ensure personal data protection, for example, in the framework of the Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data (Strasbourg, 28 January 1981), including the Additional Protocol to the Convention (Strasbourg, 8 November 2001), or in case the subject or his/her legitimate representative consent thereto in writing.

Personal data may be used only for the purposes of their collection as stated by owner (operator).

Dissemination of personal data is allowable, unless it infringes upon the rights and freedoms of the subject or affects the legitimate interests of other individuals or legal entities. In cases going beyond the purposes of their collection personal data may be disseminated on written consent of the subject or his/her legitimate representative.

17.2. Personal Data Protection

From the moment of personal data collection and until their destruction, the owner (operator) of the personal data containing base must take the following measures:

- isolate personal data from other information;
- determine the places (media) of personal data storage and prepare a list of persons performing personal data collection and processing or having access thereto; and
- when storing the media, provide conditions ensuring personal data safety and precluding from unauthorized access thereto.

Furthermore, the owners (operators) of personal data containing bases who are employers must:

- approve the list of personal data;
- determine the list of persons performing personal data collection and processing or having access thereto;
- isolate personal data from other information;
- ensure availability of and compliance with the relevant employer's acts governing personal data protection issues; and
- determine the list of persons in charge of the above measures implementation.

The legislation provides for criminal and administrative liability for violating the legislation on personal data and protection thereof.

The prosecution agencies carry out supreme supervision over legality in the area of personal data and protection thereof.

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18. INTELLECTUAL PROPERTY

18.1. General Provisions

18.1.1. Legal Regulation of Intellectual Property

The key legislative acts in the field of intellectual property are the RK Civil Code, RK Law on Copyright and Neighboring Rights dated 10 June 1996, RK Law on Trademarks, Service Marks and Appellations of Origin dated 26 July 1999, and the RK Patent Law dated 16 July 1999. Kazakhstan is a party to the Convention Establishing the World Intellectual Property Organization (WIPO), Paris Convention for the Protection of Industrial Property, Eurasian Patent Convention, Madrid Agreement Concerning the International Registration of Marks and Singapore Treaty on the Law of Trademarks, as well as a number of other international acts in the field of intellectual property protection.

The authority authorized to perform registration of items of intellectual property rights is National Institute of Intellectual Property, which is subordinated to the RK Ministry of Justice.

18.1.2. Intellectual Property Items

The protected **intellectual property items** are as follows:

- **results of intellectual creative activities** (works of science, literature and art; performances, stagings, phonograms; inventions, industrial designs; undisclosed information, etc.);
- **means of individualization** of participants in civil circulation, goods, work or services (trade names; trademarks, etc.).

The rights to intellectual property items arise by virtue of the fact of their creation or as a result of their legal protection based on a national or international registration.

The national state registers of trademarks, inventions, industrial designs and other items of intellectual property rights are available at <http://kazpatent.kz>.

18.2. Legal Protection of Trademarks

Legally protected are trademarks (service marks) registered by the authorized agency or by an international organization under an international treaty. The trademark right remains in effect for 10 years of the date of application submission, and may be extended. The trademark and trademark use right is transferable based on relevant agreements, which are subject to mandatory registration with the authorized agency.

A court may annul the trademark registration upon a claim from the party concerned in the event such trademark has not been used without a valid reason for three years preceding the date of the claim.

While being a member of the Eurasian Economic Union, Kazakhstan applies the regional principle of trademark rights exhaustion in relation to the member states of the Union. The goods lawfully put into civil circulation in the territories of the Eurasian Economic Union member states by the trademark owner or on the latter's consent may further freely circulate within the Eurasian Economic Union. In relation to other countries, Kazakhstan applies the national principle of trademark rights exhaustion, which requires obtainment of the right holder's consent to each case of introducing goods into circulation in the Kazakhstan territory.

18.3. Right to Undisclosed Information Protection

Information constituting an official or commercial secret is legally protected, if it has an actual or potential commercial value due to being unknown to third parties and is not freely accessible on lawful grounds and the holder of information takes measures to protect its confidentiality. Protected is not any information, but only technical, organizational or commercial information that meets the above criteria, including trade secrets.

The right to protection of undisclosed information against its unlawful use arises regardless of any formalities completed towards such information (registration, obtainment of a certificate). A person possessing undisclosed information may transfer all or a part of the data to another person under a license agreement.

18.4. Rights to Invention, Utility Model or Industrial Design

The right to invention, utility model or industrial design is protected by a patent. In order to be afforded legal protection, an invention, utility model or industrial design must be recognized as new, possessing inventive level, industrially applicable and original.

Effective in the territory of Kazakhstan are invention patents, utility model patents and industrial design patents issued by the authorized agency, as well as patents issued in a foreign state or by an international organization, in cases provided for by international treaties. The protection of an invention, utility model or industrial design is in effect from the date of filing the application with the authorized agency. The rights can be protected after the patent is issued.

Invention patents are effective for 20 years; utility model patents – for 5 years; and industrial design patents – for 15 years. The said patent terms are calculated from the application submission date and may be extended. Once the validity term expires and in the event of early termination of exclusive rights, the invention, utility model and industrial design become the public domain.

Patent rights may be assigned based on the relevant agreements, including license and sub-license agreements. The agreements must be in writing and are subject to registration with the authorized agency.

18.5. Copyright and Neighboring Rights

Copyright covers economic and moral rights of the authors to scientific, literary and artistic works that are the outcome of creative effort whatever their purpose, content, merit, or manner or form of expression. Copyright protection is afforded regardless of the fact of registration. As a general rule, copyright is in effect throughout the author's lifetime and for 70 years after his death. The authorship, author's name and inviolability of work are protected on a termless basis.

Neighboring rights cover stagings, performances, phonograms and broadcasts by on-air and cablecasting organizations, regardless of their purpose, content and merit, or manner or form of expression. No registration or any other formalities are required for the arising and exercise of the neighboring rights.

* * *

19. DISPUTE RESOLUTION; RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

19.1. *Judicial System of the Republic of Kazakhstan*

19.1.1. *General Provisions*

The principal legislative acts governing Kazakhstan's judicial system are the Constitution of the Republic of Kazakhstan and the RK Constitutional Law on Judicial System and Status of Judges in the Republic of Kazakhstan of 25 December 2000. The RK Civil Procedure Code establishes the procedure in civil cases.

Kazakhstan's judicial system is comprised of three level courts:

- **first instance courts** – district courts and courts deemed equivalent thereto;
- **courts of appellate instance** – oblast courts and courts deemed equivalent thereto; and
- **the court of cassation instance** – RK Supreme Court, the highest judicial body.

Kazakhstan has general and specialized courts (a specialized bench in general courts), whose competence encompasses review of certain categories of disputes (economic, administrative, investment, etc.).

Disputes between entrepreneurs and legal entities, as well as corporate disputes subjected to the rules of the first instance court, are reviewed by specialized inter-district economic courts.

Investment disputes⁷ (except for disputes involving a large investor), as well as other disputes between investors and governmental agencies associated with the investor's investment activities and subjected to the rules of the first instance court, are reviewed by a specialized panel of the Nur-Sultan City Court. Investment disputes involving a large investor⁸ and subjected to the rules of the first instance court are reviewed by a specialized judicial board of the RK Supreme Court.

19.1.2. *First Instance Court Proceedings*

The timeframes for civil cases review vary depending on the case category and complexity and are 2-3 months on average.

When filing a claim in court, the state fee is payable in the following amounts:

- for property claims, on individuals – 1%, on legal entities – 3% of the stated claim amount;
- for non-property claims – 0.5 MCI.

⁷ An investment dispute means a dispute arising from contractual obligations between investors and governmental agencies in connection with the investor's investment activities.

⁸ A large investor means an individual or a legal entity making investments in Kazakhstan in the amount of at least 2,000,000 MCI.

As a general rule, a claim is filed with the court at the respondent's location; however, in certain cases the territorial jurisdiction may be different (at the place of contract performance, at the branch/representative office location, etc.).

In cases stipulated by law or contract, submission to court must be preceded by pre-judicial dispute settlement. Pursuant to the law, such settlement is mandatory for most labor disputes, disputes concerning contract amendment or termination, disputes with shippers, disputes with customs authorities, and some other categories of disputes.

The parties may enter into an amicable agreement or agreement to settle the dispute via mediation or participatory procedure. The parties to the dispute may take advantage of this right in the courts of the first, appellate and cassation instances before withdrawal of judges to the conference room, and at the stage of judgment enforcement.

Certain categories of cases may be reviewed in writ or simplified proceedings. Particularly, the writ proceedings apply to certain undisputed claims for recovery of money or movable property. The simplified proceedings apply to cases over claims for money recovery, if the claim value does not exceed 700 MCI for legal entities or 200 MCI for individual entrepreneurs and individuals. Cases subjected to writ or simplified proceedings are reviewed without summoning the parties, based on the written documents provided by them.

The first instance court's judgments enter into force upon expiration of the period for their appeal, unless they have been appealed (protested).

19.1.3. Revision of Judicial Acts

The acts of first instance courts may be revised in accordance with **appellate or cassation** procedure, except for some categories of cases. The act revision proceedings may be initiated by the parties to dispute, persons involved in the case, other persons whose interests are affected by the court acts, or by the prosecutor.

When filing an appellate petition no state duty is payable. Motions to dispute judicial acts in a cassation procedure require payment of a state duty in the amount of 50% of the relevant state duty rate specified above in clause 19.1.2.

Appellate Proceedings. The first instance court's judgments, which have not entered into legal force, may be appealed via appellate procedure within 1 month of the final judgment issuance date. For persons not participating in the proceedings this period is calculated from the date of sending them a copy of the judgment.

Appellate claims are reviewed by judicial panel comprising at least three judges. The general case review period in appellate instance is 2 months of the date the case is received by the court.

The appellate instance court verifies the lawfulness and justifiability of the first instance court's judgment in full according to the case-available evidence. New evidence may be accepted only if the appellate instance court acknowledges that impossibility of their submission to the first instance court was due to valid reasons.

Some rulings of the first instance court, which do adjudge the case on the merits, may be contested by specific appeal or protest within 10 business days of the final ruling preparation date. The specific appeal is reviewed by an appellate court judge sitting alone.

The appellate instance court's judgments enter into force from the moment they are announced.

Cassation Proceedings. Judicial acts of the appellate instance courts may be appealed by way of cassation within 6 months of the date of their entry into force.

Some judicial acts are not subject to revision by way of cassation, in particular:

- acts on cases reviewed in simplified proceedings;
- acts on cases ended by amicable agreement or agreement to settle the dispute through mediation; or
- where the claim amount is less than 2,000 MCI for individuals or less than 30,000 MCI for legal entities.

A motion or a protest for revision of judicial acts by cassation is preliminarily considered by a single judge. The preliminary motion review period is 30 business days of the date the motion is received by the court. In the event of certiorari, such period is calculated from the date the case is received by the cassation instance court.

If a case is referred for revision by a cassation board following the results of preliminary review of a motion, such board composed of at least three judges considers the motion within 30 business days of the date of its receipt by the board.

The rulings of the court of cassation instance enter into force from the day they are announced.

Judicial acts not appealed via appellate procedure are not subject to revision by cassation, except where cassation proceedings are instituted upon submission by the Chairman of the RK Supreme Court or upon a protest brought by the RK Prosecutor General.

Case revision upon newly discovered or new circumstances. Judicial acts which entered into legal force may be revised upon newly discovered or new circumstances, which include, for example:

- cancellation of a judicial act, which had prejudicial value when reviewing the case; or
- an effective judgment to invalidate the transaction on the basis of which the judicial act was issued.

The case is to be revised upon newly discovered circumstances by the same court whose judicial act is being revised.

19.1.4. Proceedings in Cases with Foreign Persons Participation

Kazakh courts hear cases involving foreign persons, if, among other things:

- the defendant legal entity is located or has property in the territory of Kazakhstan;
- the individual defendant resides or has property in Kazakhstan;
- the management body or the branch/representative office of the foreign legal entity is located in Kazakhstan;
- in cases for compensation of harm caused to property, an action or other circumstance giving rise to the harm compensation claim took place in the RK territory;
- the lawsuit stems from a contract, which was to be or was performed, in full or in part, in the RK territory;

- the lawsuit stems from an unjust enrichment occurring in Kazakhstan.

Local courts of law have exclusive jurisdiction over certain categories of cases. For instance, only Kazakh courts may review cases relating to the rights to immovable property located in Kazakhstan; cases upon claims against shippers stemming from shipping contracts, if the shipper is located in the RK, etc.

19.2. Dispute Settlement by Arbitration

The key provisions governing arbitration proceedings are defined by the RK Law on Arbitration dated 8 April 2016. The arbitration rules are defined by the rules of permanent arbitrations.

A dispute may be referred to arbitration if there is an arbitration agreement between the parties. Certain categories of disputes cannot be referred to arbitration, specifically, rehabilitation and bankruptcy disputes, or disputes between natural monopoly entities and their consumers.

There are certain restrictions on disputes a party to which are governmental agencies or enterprises, or legal entities in which the state directly or indirectly holds 50 or more percent of the voting shares or participation interests in the authorized capital. Disputes between such legal entities representing a party to a dispute and Kazakhstan individuals and/or legal entities representing another party to such dispute may be referred to arbitration only subject to the authorized agency's consent. When reviewing such category of disputes, the arbitration applies the RK legislation, unless otherwise stipulated by international treaties ratified by the RK.

19.3. Recognition and Enforcement of Foreign Judgments and Arbitral Awards

Foreign judgments and arbitral awards are recognized and enforced in Kazakhstan, if this is provided for by a law and/or an international treaty ratified by the RK, or on the basis of reciprocity.

The period missed for a valid reason may be reinstated.

Kazakhstan has acceded to the following international conventions:

- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958); and
- European Convention on International Commercial Arbitration (Geneva, 21 April 1961).

Kazakhstan is also a party to a number of multilateral international treaties providing for the mutual recognition and enforcement of judgments of the states located in the former USSR territory: Russia, Belarus, Ukraine, Moldova, Kyrgyzstan, Uzbekistan, Turkmenistan, Tajikistan, Georgia, Armenia and Azerbaijan.

Kazakhstan has also entered into bilateral international treaties on mutual legal assistance, including recognition and enforcement of judgments, with a number of other countries, in particular with Pakistan, India, Lithuania, Democratic People's Republic of Korea, Turkey, Mongolia, China, UAE and Vietnam.

A foreign judgment or arbitral award may be filed for enforcement within 3 years from the date its voluntary execution period has expired. As a rule, an application for recognition and enforcement of a foreign judgment or arbitral award is filed to court at the place of location of the debtor or its property. Such application is reviewed by a sole judge within 15 business days of the date the application is received by court.

19.4. Court and Arbitration of the Astana International Financial Center

Starting 1 January 2017, the Constitutional Law on the Astana International Financial Center (**AIFC**), which is the territory with a special legal regime in the financial sphere, entered into force in Kazakhstan. The AIFC has its own court, which is beyond the RK judicial system and resolves disputes according to the current AIFC law. The AIFC law comprises, among other things, the AIFC acts based on the principles, norms and precedents of England and Wales and/or standards of the leading international financial centers, unless such acts contradict the above Constitutional Law.

The AIFC court considers and resolves the disputes, which:

- arise between the AIFC participants, the AIFC bodies and/or their foreign employees;
- relate to any operation conducted in the AIFC and governed by the AIFC law; and
- were referred to the AIFC by agreement of the parties.

The judicial proceedings in the AIFC court are conducted in English.

The AIFC judgments are enforced in Kazakhstan in the same manner and on the same conditions as the judgments of the RK courts, and no procedure for the recognition of such judgments by the state court is required. If so requested by the party concerned, the AIFC court may issue an order on its judgment enforcement. At the same time, it is worth pointing out that such orders have not been included in the list of enforcement documents yet, which documents are subject to enforcement according to the RK Law on Enforcement Proceedings and Status of Court Enforcement Officers.

The International Arbitration Center was also established under the AIFC, which considers the disputes provided there is a respective arbitration agreement between the parties. The awards of the International Arbitration Center are recognized and enforced in Kazakhstan according to the same procedure as established for the recognition and enforcement of arbitral awards issued by the RK arbitration tribunals.

You can find more detailed information about the AIFC court and arbitration at <https://www.aifc.kz>.

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PLANNING TO OPEN BUSINESS IN KAZAKHSTAN? AEQUITAS WILL BE HAPPY TO HELP

AEQUITAS has been providing services to support the establishment of businesses in Kazakhstan since the time of adoption of its first legislative acts on commercial legal entities, the firm's lawyers thus being versed in all statutory and current practice subtleties. The firm provided legal support to launch the first joint ventures, representative offices of foreign banks and subsidiaries of major industrial and energy corporations in Kazakhstan.

When rendering legal support to set up and register legal entities, branches and representative offices, AEQUITAS provides "turnkey" services, from the drafting of foundation documents to opening of bank accounts and obtainment of corporate seal. The client does not have to be present in Kazakhstan until it comes to the state registration of its legal entity or structural subdivision.

AEQUITAS lawyers help the clients register businesses not only in Almaty and Nur-Sultan where the firm's offices are located, but in the entire territory of Kazakhstan.

AEQUITAS Registration Team's Work in Numbers (2008–2018)

- 90** registration projects
- 51** re-registration projects (for different reasons)
- 90** foundation documents amendment projects
- 44** management change projects
- 19** liquidation projects
- 7** securities projects

Project Geography



USA – 24	China – 6	Kazakhstan – 30	Australia – 1	India – 1	Slovakia – 1
Russia – 30	UK – 5	Austria – 3	Belgium – 4	Latvia – 1	Spain – 1
Germany – 16	Czech Republic – 2	Israel – 1	Canada – 1	Panama – 1	Sweden – 1
France – 7	Hungary – 5	Italy – 2	Denmark – 1	Romania – 2	Switzerland – 8
Curacao – 1	Poland – 1	Finland – 2	BVI – 1	Luxembourg – 1	Malta – 1
Croatia – 1	Bulgaria – 2	Cyprus – 9	The Netherlands – 13	UAE – 1	Turkey – 2

AEQUITAS – A LEADER ON THE KAZAKHSTAN'S LEGAL SERVICES MARKET

*"If I'm asked to name a local firm which is the best in terms of quality, I'd pick them."
Chambers Asia Pacific, 2019*

*"They know how we think about things, they're good at explaining local laws, and so they can help us adapt our thinking to work with Kazakh law."
Chambers Asia Pacific, 2018*

*"AEQUITAS is a reliable and well-regarded local firm with broad experience."
Legal 500, 2015*

AEQUITAS, a Kazakhstan national law firm, was founded in 1993.

In the early 90s, AEQUITAS was one of the first counsels to provide legal support both to foreign investors coming to Kazakhstan's market and to the starting domestic businesses. **First joint ventures with foreign participation** in Kazakhstan were organized with AEQUITAS legal support.

AEQUITAS is one of Kazakhstan's leading law firms acknowledged in the global legal services market. For many years, authoritative legal guides, including Chambers & Partners, Who's Who Legal, Legal 500, Best Lawyers are rating AEQUITAS and its partners and associates as the **country's most recommended** in the Energy & Natural Resources, Corporate & Finance, M&A, Dispute Resolution and other areas. Many publications specifically acclaim the firm's Labor, Environmental and Healthcare & Pharmaceuticals practice.

AEQUITAS's clients are companies active in the leading sectors of economy from **more than 50 countries**, including major international corporations, companies representing world famous brands, banks and financial institutions, most of them working with AEQUITAS for years. According to the rating agencies and the firm's clients and business partners, AEQUITAS is **one of the most client-oriented law firms in Kazakhstan**. Alongside with providing legal services of invariably high quality, AEQUITAS is regularly informing its clients of the business-relevant changes in legislation and practice, organizing trainings and seminars and annually holding a Client Day.

AEQUITAS reputation is supported by close professional ties with the world's largest international and national law firms, such as Allen & Overy, Baker Botts, Clifford Chance, Debevoise & Plimpton, Freshfields Bruckhaus Deringer, ALRUD, Egorov Puginsky Afanasiev & Partners, Pepeliaev Group, and others. The firm's lawyers are well informed about the legal service markets of Russia, UK, USA and CIS countries. Thanks to cooperation with its international and national partners, AEQUITAS is **prepared to provide services in different jurisdictions, without compromising on their quality and timeliness**.

The firm's long presence in the legal market, reputation and extensive professional ties allow AEQUITAS engaging the **leading Kazakh and foreign experts in all areas of law** to participate in its projects and preparation of legal opinions. AEQUITAS's consultants are renowned scholars, specialists from different sectors of economy and representatives of international organizations.

AEQUITAS team of lawyers is **a team of professionals** perfectly versed in the Kazakh legislation and specifics of the national market. The firm's partners and associates are recognized experts both in Kazakhstan and abroad.

AEQUITAS and its lawyers are members in different professional organizations and unions, including International Bar Association (IBA), Association of International Petroleum Negotiators (AIPN), European Business Association of Kazakhstan (EUROBAK), Kazakhstan Petroleum Lawyers' Association (KPLA) and Kazakhstan Bar Association (KazBar).

AEQUITAS partners are among the founders of Kazakhstan Bar Association (National Public Association) set up on the initiative of the leading Kazakh law firms, including AEQUITAS. Olga Chentsova, the firm's Managing Partner, is one of the founders of Kazakhstan Bar Association and a member of its Management Board.

AEQUITAS partners and associates are **on the lists of arbitrators for the following courts of arbitration and domestic arbitration tribunals**: Center for Arbitration and Domestic Arbitration Tribunal Proceedings under the National Chamber of Entrepreneurs of the Republic of Kazakhstan, Kazakhstan International Arbitrage (KIA), International Arbitration Court of the Republic of Kazakhstan (IAC), International Court of Arbitration of IUS Legal Center, International Commercial Arbitration Court of Eurasian Mediation Center and Arbitration Tribunal of Eurasian Mediation Center. AEQUITAS lawyers act as local law experts in disputes reviewed by the leading international courts of arbitration.

AEQUITAS is widely known for its **research and analytical work**. The firm is annually engaged to prepare reviews on different local law areas for IBA and World Bank. Analytical articles and reviews on different aspects of the Kazakh law and legislation by AEQUITAS lawyers are published in specialized magazines and analytical-and-legal compendia in Kazakhstan and abroad.

AEQUITAS experts have been actively participating in the development and improvement of the most important acts of Kazakhstan's civil and economic legislation, including the Civil Code and such laws of key importance to the country's economy as the Foreign Investment Law, Petroleum Law, Subsoil Law, Law on International Commercial Arbitration and a number of other regulatory legal acts.

The firm's potential allows providing **services to embrace practically all issues** its clients may have arising, be it legal support in complex projects, advice on various civil law matters, establishment of new companies, or representation in courts at any level.

The firm has offices in Almaty and Nur-Sultan (Kazakhstan).

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CONTACT INFORMATION

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