

DOING BUSINESS IN KAZAKHSTAN



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(1) About Kazakhstan

1.1 Area and Climate

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

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

1.2 Population and ethnic composition

Population: 17,145,700 (as of 1 January 2014).

Ethnic composition: according to the 2009 census, the ethnic composition is as follows: Kazakh – 63.07%, Russian – 23.7%, Uzbek – 2.85%, Ukrainian – 2.08%, Uyghur – 1.4%, Tatar – 1.28%, German – 1.11%, other ethnic groups – 4.51%.

1.3 Religion and Languages

Religion: 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.

1.4 Currency

Tenge (KZT), 1 tenge = 100 tiyn; Tenge was introduced on 15 November 1993.

1.5 Political System

Kazakhstan is the 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.

1.6 Legal System

Kazakhstani 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.

Kazakhstani 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 Customs Union of Russia, Belarus and Kazakhstan (the CU or Customs 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 CU territory.

1.7 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 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.

(2) Kazakhstan business organizations

The Civil Code of the Republic of Kazakhstan defines the types and forms of legal entities in Kazakhstan. The main of which are joint-stock companies and limited liability partnerships which are commercial organizations.

2.1 Joint Stock Company

The formation of a joint stock company is more complicated than other legal forms described herein. The formation of a joint stock company requires state registration of the legal entity and then subsequent registration of the shares. State registration is the same as for other organizational legal forms but includes a minimum charter capital requirement (equity requirement) of 50,000 times the statutory monthly calculation indices (currently approximately \$512,000 USD). This equity must be paid into the joint stock company no later than 30 days after the state registration of the entity.

Additionally, the joint stock company must adhere to strict statutory requirements related to its operations. The statutory requirements include a lengthy list of procedural guidelines necessary for carrying out shareholder and board meetings and making company decisions.

The law on joint stock companies is developing and is being amended from time to time. The amendments to the law shall apply to the registered charter and it is occasionally required to amend and re-register charters of joint stock companies.

The form of joint stock company is not popular in Kazakhstan and is normally used in cases where the business structure requires a large membership of shareholders.

2.2 Limited Liability Partnership

In comparison with formation of a joint stock company, the creation of a limited liability partnership is less complex. A distinctive feature of a limited liability partnership is a division of charter capital into shares and the absence of individual liability of the participants. Therefore, a Kazakh limited liability partnership is limited in liability to the extent of the capital contributed by each member (or the member).

The Kazakh limited liability partnership law allows formation of a limited liability partnership by a single participant, including by a foreign company.

The statutory requirements regarding management in limited liability partnerships are not complicated. Moreover, the limited liability company can make decisions in a more efficient manner than other organizational legal forms, such a joint stock company. Decisions regarding licensing issues can be more effectively dealt with utilizing this type of entity over the branch (as describe below).

(a) **Extent of limited legal liability**

A limited liability partnership shall be liable for its obligations as a separate legal entity. And likewise, a limited liability partnership shall not be liable for the obligations of its participants. The participants or members of a limited liability partnership shall not be liable for the liabilities of the partnership and they shall bear the risk of loss associated with operations to the extent of the contributed capital. Some exceptions to this rule do exist in the Civil Code, but such exemptions are applied to any legal entity forms.

A limited liability partnership will make key decisions through resolutions obtained at a general meeting of participants, which subsequently shall be adopted by the participants personally and reduced to written form. Thus, the decision-making powers of a limited liability company can be streamlined as compared to a joint stock company. This will increase operational effectiveness to the management company.

(b) **Ease of formation**

Kazakhstan laws provide for establishing a limited liability partnership with a single participant or member. A limited liability partnership with a single participant or member shall be formed on the basis of decisions adopted by the founder, individually. Thus, a limited liability partnership founded by a sole participant needs no foundation agreement. However, a foundation agreement is required for multiple member partnerships. Additionally, the participant who has formed the partnership shall approve the charter of the limited liability partnership. The foregoing founding documents are submitted together for state registration as with other organizational legal forms.

The Kazakh Civil Code sets out that foundation agreements and the charters of legal entities of any form (JSCs and LLPs) shall be governed by Kazakh law (not a foreign law).

(c) **Capitalization**

The charter capital of a limited liability partnership shall be formed by way of joining together contributions of the foundation parties (participants or single participant). The initial size of the charter capital shall equal the sum of foundation parties' contributions and may not be less than

the amount equivalent to one hundred monthly calculation indices (app. USD\$1,100) as of the date of filing the documents for the partnership's state registration.

Funds, securities, property rights, including the right to use land and the right to results of intellectual activity, as well as any other assets may be contributions to the charter capital of a limited liability partnership. It shall not be allowed to make contributions in the form of personal non-property rights or any other intangible assets.

As a result of contributing assets, the ownership rights in contributed assets shall be transferred to the established company (i.e. the shareholders will not be considered as owners of such contributed assets). It is possible to contribute the right to use the assets (i.e. without transfer of the ownership right).

The property of a limited liability partnership shall be formed by contributions of its foundation parties (participants), income received by the partnership, as well as from other sources, which are not prohibited by legislation. Legislative acts or foundation documents of a limited liability partnership may provide for the formation of the reserve capital or other funds. Assets of a limited liability partnership shall be accounted for in its balance sheet.

(d) Management

The authority of the bodies of a limited liability partnership, as well as the procedures for decision-making and acting on behalf of the partnership shall be defined by the law on limited liability partnerships, other legislative acts and the partnership charter. The supreme body of a partnership, (and therefore its authority) shall be the general meeting of its participant(s).

Executive body of a limited liability partnership may consist from one or several directors. The charter of the partnership shall define the procedure for operation and competence of an executive body.

Establishment of Board of Directors is an option (but not a requirement) in limited liability partnerships. Thus, a company may be managed by shareholders' meetings (or decision of the sole shareholder) and director (CEO) or directors (executive body).

(e) Termination of Activities

Reorganization (merger, accession, subdivision spin-off, and transformation) and liquidation of a limited liability partnership shall lead to the termination of activities of a limited liability partnership. In addition, the following instances may furnish grounds for termination of activities of a limited liability partnership: (1) when as a result of reducing the charter capital its size falls below the minimum size equivalent to one hundred monthly calculation indices as of date of filing the documents for the partnership's state registration; and (2) when participants do not form within the period established by the decision of a general meeting, the charter capital of the partnership; and such period may not exceed one year from the day of the partnership's registration. In any other case, the partnership shall be subject to liquidation under a court decision upon an application of an interested person. In accordance with the general principle of the Kazakh Civil Code, a company (partnership) can be liquidated in accordance with the decision of its supreme body (general meeting) or in accordance with a court decision.

2.3 Branch of Non-residents

A branch office is a representation of a foreign legal entity in Kazakhstan. The Kazakh law considers a branch as a subdivision of a legal entity which is located out of its place of residence and which performs all or part of its activities. The advantages of establishing a branch office are: (1) first-hand contact with the marketplace; (2) low costs; and (3) efficient and safe control over company operations within Kazakhstan. That is, a branch office does not face the same risk or complications as joint ventures may be exposed to, such as hostile minority interests. Branch offices are inexpensive to register.

Additionally, branches offer all the protections afforded to partnerships without the same level of complications (some exceptions to this principle do exist under certain laws, including the law on licenses). Branches are not considered as local legal entities but rather an extension of the head office (wherever the head office may be located) and has a simplified management structure as compared to that of joint stock companies. A head of branch is appointed by the legal entity's authorized body and acts under its power of attorney. A branch operates under the resolution of the legal entity's authorized body on establishment of the branch and on approval of its bylaws.

Nonetheless, operating a branch office will require dealing with local officials. As with all foregoing entities, branches must be registered with the Ministry of Justice. The process is not complicated and can be expedited for quick entry into the market.

All assets of a branch should be consolidated in the company.

Taxation regime applied to branches is similar to that applied to legal entities (except for the dividend tax).

Upon termination of its activities, the branch shall be subject to deregistration subject to a resolution of the legal entity, originals of the registration certificates and the bylaws of the branch as well as the document confirming that the state registration fee has been paid. In addition to the aforesaid documents, the branch shall be required to submit a certificate from a tax authority at the location of the branch certifying that the branch has no outstanding tax liabilities.

Branches are more appropriate for service-based firms. They can be even more advantageous when the head office is located in a country that maintains an advantageous tax treaty with Kazakhstan.

2.4 Consortium

A consortium shall be a temporary voluntary equal-rights union (association) on the basis of an agreement on joint business activities in which legal entities unite certain resources and coordinate efforts to solve specific business issues. A consortium is not considered as a legal entity.

The participants (members) of a consortium shall retain their business independence and may take part in the activities of any other consortia or associations. The participants of a consortium shall be jointly liable for the obligations related to the activities of the consortium, unless it is otherwise stipulated in the agreement on consortium. In terms of taxation, each participant of a consortium is viewed as an individual legal entity.

Relations between the members of a consortium shall be built on a contractual basis. Managing a consortium shall be carried out in accordance with the consortium agreement between the members of the consortium.

The consortium is the least used of organizational legal forms listed herein and generally is a short-term association formed with a limited purpose.

2.5 Our recommendations on forms of presence in Kazakhstan

In order to establish a presence in Kazakhstan, we would recommend using the form of limited liability partnership or branch.

We are aware that some foreign investors register both partnerships and branches in Kazakhstan. This structure is the most effective from legal perspective and for the purposes of importing necessary equipment and materials to Kazakhstan. However, in practice, using two registered presences may lead to certain financial and tax disadvantages. The reason for this is that, in order to take a maximum possible amount of expenses for the purpose of deduction in Kazakhstan, main financing and expenses must go through a single registered presence. In other words, the Kazakhstan tax authorities prohibit, for example, deduction of any expenses incurred by a branch from the taxable base of a limited liability partnership, notwithstanding that such expenses have been financed and applied under the same project.

We do not suggest closing the existing branch in Kazakhstan in case of registering an LPP here. However, in case of establishing an LLP, funding of the project should be organized taking into account the tax issues mentioned above. Also, because Kazakh authorities will consider the existing branch as a permanent establishment of the shareholder (or its affiliate) of the LLP, the effect of such permanent establishment of the parent company (its affiliate) in Kazakhstan on the domestic tax regime of the LLP's parent company shall be checked.

If participation of a local partner is implied or permitted under the project, then the most preferred form would be a limited liability partnership because it permits a standard sale of participation interest in the partnership. A branch may not be established by two legal entities.

Kazakhstan has signed double tax treaties with a number of countries (including the UK and The Netherlands). In this regard, we recommend that the presence in Kazakhstan is organized through one of the countries that is a party to a double tax treaty with Kazakhstan.

2.6 Restrictions on foreign participation

Kazakhstani legal entities engaging in certain types of activities, such as telecommunications, pension provision, security guarding, mass media, aviation, etc., are subject to certain restrictions on foreign participation (individuals and legal entities).

(3) Labor Issues

In Kazakhstan, the employer/employee relationship is generally regulated by Labor Code of Kazakhstan (hereinafter the "Labor Law"), as well as a few ancillary laws, resolutions and normative acts. These ancillary regulations pertain to issues such as procedures for labor disputes, the employment of foreign nationals, and the various fines for labor violations.

3.1 Job Safety

The Labor Law intends to promote the safety, protection life and health of employees during their labor activity, as well establish the basic principles of state policy for labor protection. The Labor Law also provides the rights and obligations of both an employer and employee regarding job safety. According to the Labor Law, the employer is charged with the duty to warn employees of harmful or dangerous working practices/conditions, or the possibility of occupational illness, and additionally to adopt measures that prevent risks at the work place or risks associated with certain technological processes.

The Labor Law designates the Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan (hereinafter the "Ministry of Labor") as the authorized body, which shall take control over labor protection within the territory of the Republic.

Inspectors of the Ministry of Labor are granted significant rights, for example, an inspector may freely visit any company for the purpose of labor audit. An inspector may by its decision suspend operations of individual sites or workshops, if he/she finds any violation of the occupational safety requirements, which threatens health and life of employees. An inspector does not need an approval of any authority or court in order to suspend operations of a company.

An inspector may suspend from work any employee, who has not taken the training or instruction required to work at a specific location or with specific equipment. As a result of company's audit by an inspector, the audit report is prepared and the proposal to pay the fine is issued, if any violations of the occupational safety requirements have been found. Inspectors may impose administrative sanctions (fines) on the company's officers (typically, chief executive officer, manager of personnel department or safety engineer). If said officers committed gross violations of the labor safety legislation (e.g. did not fulfill the instructions of an inspector), which resulted in injuries or death, criminal proceedings may be instituted against such officers, which entail custodial sentence.

3.2 Vacations

According to the Labor Law, an employee is entitled to at least 24 calendar days of annual paid leave, not including any public holidays falling within that time period. Additional annual paid leaves shall be provided to certain types of employees, in particular, those engaged in difficult physical operations and in operations involving harmful or hazardous work. These occupations are designated an authorized state body. The terms and procedure for providing an annual paid leave shall be established by the individual employment or collective agreement.

3.3 Equal Pay for Equal Work

Employers are entitled to set the wages of their employees independently. However, all payments must be equal to, or greater than the statutory approved minimum monthly wage. The minimum wage for 2014 year has been set at KZT 19,966 (approximately \$ 110USD). The Labor legislation guarantees equal payment for equal work, i.e., for work equal in length, volume and complexity, as well as eliminates any discrimination in payment for labor on the basis of sex, age, race and nationality.

It should be noted that Kazakh courts deliberated several suits of local employees against foreign entities or joint ventures, the substance of which was that expatriate employees in Kazakhstan are paid higher salaries for the same work. Such difference in payroll was assessed by the court

as discrimination, and the court required that the employer should pay for the labor of expatriate and local employees on an equal basis. There has been no guidance or opinion of the Supreme Court of Kazakhstan as to such disputes yet, and certain risk of such suits exists and is relatively high.

3.4 Mandatory and optional insurance

An employer is legally obliged to insure the employee from harm to health and life that may be caused when the latter performs his/her work duties. Types, procedure for and terms of obligatory insurance are established by the legislative acts. The law, dated February 7, 2005, Concerning Obligatory Employer Insurance against Liability for Harm Caused to the Life and Health of an Employee During their Work (Professional) Duties became effective from July 1, 2005. Previously, in Kazakhstan it was at employer's discretion whether they were insured for this type of liability. However, from July 1, 2005, this type of insurance became mandatory.

According to this law, the legal basis for an obligatory insurance will be obligatory insurance agreement concluded between the employer and insurance organization. Employees insured by their employer will be beneficiary, i.e. the recipient of an insurance payment, under this type of agreement. Insurance agreement should be in place within 10 days from the day they actually start work. Ministry of Labor is the controlling body to ensure that employers comply with the requirements of the Law on mandatory insurance.

The practice of application of the Law on mandatory insurance is limited. The Law does not distinguish between the insurance of expatriate and local employees, which implies mandatory insurance of both local and expatriate employees. The insurer, which provides this type of insurance, must hold the license to provide this particular type of insurance. At present, 21 insurers (all of which are local companies) have such license. The Law permits an employer to enter into the agreements of voluntary liability insurance in addition to the mandatory insurance agreement.

It should be noted that liability for any damage to an employee (as well as obligation under mandatory insurance) is with the direct employer. Customer (general contractor) has no responsibility for or obligation in respect of insurance of the contractor's (subcontractor's) personnel, notwithstanding that the work is performed within the customer's work site.

The amount of insurance premium under insurance agreement depends on the amount of employee's salary and category (operating, administrative, support staff). The minimum and maximum limits of insurance premium under the mandatory insurance agreement are set by the law.

3.5 Labor Contracts

In accordance with the Labor Law, all employees should conclude a written labor contact containing certain mandatory provisions with respect to the terms of the contact, details relating to compensation and the specific rights and obligations of the parties. These provisions shall include, for example, a job title, the term of the agreement, the commencement date, compensation, work hours, vacation periods, etc. Labor contracts may be concluded either for an indefinite term or for definite terms of no less than one year, as well as one year to perform a particular job. If a labor contract is renewed with an employee, it shall be considered to have been concluded for an indefinite term. If it is discovered that a labor contract has been concluded

for a definite term in order to avoid providing compensation and guarantees to an employee, as envisaged by a labor contract concluded for an indefinite term, the employer shall be held liable.

The Labor Law permits to enter into a contract for a certain term (if there is a reason for that) and for an undefined term. Currently, contracts with undefined term are more widely-spread, because the courts often disallow the reason for entering into a term contract, which does not help an employer to fire out employees.

The Labor Law permits to contemplate terms of work and certain terms of dismissal in the contract, accordingly, use of the good form of contract significantly reduces the risk of litigation with employees.

3.6 Dispute Settlement

Labor disputes shall be handled by consensus of the parties or through court procedure. The procedure for handling labor disputes in courts shall be defined by the laws of the Republic of Kazakhstan. According to Labor Law, with the consensus of the parties labor disputes may be considered by a reconciliation commission. The procedure of consideration of labor disputes by reconciliation commission is regulated by the Labor Law. Under this procedure, a reconciliation commission shall be formed on the parity principles of equal numbers of representatives of the employer and the employees, the work procedure and terms of its authority are adopted by a joint decision of the parties.

Commission is not frequently used as the authority for settlement of labor disputes. If no such commission has been formed on the initiative of an employee or employer, each of the parties may refer the dispute for settlement to the court.

It should be noted that the current labor legislation in Kazakhstan protects the employee and strictly regulates termination procedure of the employment relations. Specifically, it is not an easy task to terminate the employment agreement by the employer. The current law only allows for termination in certain cases. If the court determines that the reason of dismissal of any employee (termination of the employment contract) is unlawful, the court would obligate the employer to pay such employee his/her salary for forced absence, but not more than for 6 months and reinstate the employee in the same job and in the same position. It is the most typical consequence in case of a dispute with an employer (in reality, courts are more favorable to employees in resolving labor disputes).

3.7 Labor Permits for expatriates

Non-resident employees hired by Kazakhstani legal entities and working in Kazakhstan are required to have a labor permit, excluding citizens of Russian Federation and the Republic of Belarus. In accordance with Convention “On legal status of employee – migrants and members of their families” which came into force on January 01, 2012 in Kazakhstan citizens of Russian Federation and the Republic of Belarus are not required to have labor permit during employment in Kazakhstan.

Under Kazakhstani law and relevant Government Resolution, rules for the determination of quotas, conditions and procedures of issuing permits to employers for the attraction of foreign labor has been implemented. The work permits are issued in accordance with quotas established by the Government.

Employers must prove that they have made sufficient effort to find and hire local expertise. This generally is demonstrated by placing ads in various print publications for given position. Employers are also required to place a refundable deposit in a Kazakhstani bank slightly greater than the price of return ticket to the foreign national's country of origin.

In order to obtain a work permit to employ non-resident workers, the employer should apply to the Department of Labor, Employment and Social Welfare for the oblast and cities of Astana and Almaty depending on the location of its business activity. A work permit issued is valid in the territory of the relevant oblast as well as the cities of Astana and Almaty and may not be transferred to other employers. When an employer needs to engage foreign citizens for work on several oblasts and/or the cities of Astana and Almaty, the local executive body, in agreement with the Ministry of Labor, may issue a permit for two or more oblasts and for the cities of Astana and Almaty.

The heads of a branch /representative office of a foreign entity are not required to obtain work permits.

A failure to obtain a work permit by an expatriate employee gives the Ministry of Labor the right to impose administrative fines on the chief executive officer and the human resource manager of the company. In addition, expatriate employees who do not have a work permit can be deported from Kazakhstan. In recent years, the Ministry of Labor has focused on compliance control in this regard.

(4) Courts in Kazakhstan and Dispute Resolution

4.1 Local courts

The Kazakh court system has changed within the last fifteen years, especially with respect to the courts' competence on consideration of disputes between foreign and local entities. At present time, local courts consider cases involving foreign entities. Decisions of such local courts may be appealed to regional courts (appeal and cassation instances) and then to the Supreme Court of Kazakhstan. There are four levels of the courts: (i) the Court of First Instance; (ii) the Court of Appeal Instance; (iii) the Court of Cassation Instance; and (iv) the highest level is the Supreme Court of Kazakhstan. Litigation in Kazakhstani courts takes time (some litigations procedures may last for more than one year).

Kazakh courts do not have sufficient experience of handling disputes application of a foreign law. Normally, an agreement between Kazakh and foreign company contains the dispute resolution (arbitration) clause.

4.2 Arbitration

In accordance with the Law on International Commercial Arbitration and Kazakhstani Procedural Code, foreign court judgments are recognized and enforced in Kazakhstan only if an international treaty for the mutual enforcement of court judgments between Kazakhstan and the country of court judgment or arbitral award is in force. Kazakhstan is not a party to any multilateral or bilateral treaties with England or the USA for the mutual enforcement of court judgments. Accordingly, should a judgment be obtained from a court in England, it will not have effect in Kazakhstani courts.

The Republic of Kazakhstan is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Accordingly, a foreign arbitral award obtained in a state which is a party to the Convention should be recognized and enforced by a court in Kazakhstan subject to qualifications provided for in the Convention and in compliance with the Kazakhstani civil procedure and the procedures established by the Kazakhstani legislation on commercial arbitration for the enforcement of arbitration awards.

(5) Anti-Corruption Laws

Kazakhstan approved law on campaign against corruption in 1998 that being amended from time to time (the "Anti - Corruption Law"). Anti - Corruption Law restricts government officials to be employed in commercial organizations, to carry on business. The government officials shall declare their annual income.

Anti – Corruption campaign in Kazakhstan is getting stronger from year to year.

(6) Intellectual property

Kazakhstan is a party to the Paris Convention for the Protection of Industrial Property” of 20 March 1883 (as amended) (the "Convention"). Kazakhstani Civil Code contains general principles for creation, registration and protection of intellectual property. Since 1999 a number of laws relating to intellectual property rights have been passed, including the Law "On Trade Marks" that specifies the procedure for registration and protection of trade marks. Kazakhstani Civil Code and the laws provide that the Paris Convention prevails over the local law requirements.

Kazakhstani Civil Code prohibits use of intellectual property without consent of its owner (possessor of the rights). Kazakhstani Administrative Code provides for administrative fines for using intellectual property without consent of its registered owner (possessor of the rights) and Kazakhstani Criminal Code provides for criminal sanctions for illegal use of intellectual property with the purpose to gain profit or for causing material damage to the owner (the possessor of rights) of intellectual property.

A foreign entity (a person) may register its intellectual property rights only through a local agent that must be licensed with the Committee on Intellectual Property of the Ministry of Justice of the RK. In Kazakhstan, the intellectual property rights registered in a country which is a contracting party to the Convention, are protected in accordance with the provisions of the Convention and the laws of Kazakhstan.

An owner or legal possessor (including a foreign entity or person) of intellectual property rights may protect its rights against any illegal usage by submitting an application to the Committee on Intellectual Property of the Ministry of Justice of the RK or by filing a claim with Kazakhstani court.

(7) Licensed Activity

In accordance with Kazakhstani Law on Licensing the following activities are the subject to licensing:

- industry;
- uses of nuclear-power;

- turns of poisonous substances;
- transport;
- turn of narcotic facilities, psychotropic substances;
- providing of informative safety;
- special technical equipments intended for realization of operatively-search events;
- turn of armament, military technique and separate types of weapon, explosives and wares with their application;
- uses of space;
- informatizations and connections;
- educations;
- mass medias;
- agriculture;
- health protections;
- maintenances of physical and legal persons;
- gambling business;
- veterinary sciences;
- judicial expertizing taking into account Kazakhstani Law "On judicial expertizing activity in Republic of Kazakhstan";
- cultures;
- financial sphere and activity related to the concentration of financial resources;
- architectures, town-planning and building;
- making of state symbols of Republic of Kazakhstan;
- productions and turn of ethyl spirit and alcoholic products, production of tobacco wares;
- export and import of commodities;
- commodity exchanges

Licenses differ on the following signs:

1) On subjects:

- issued to individuals and legal entities of the Republic of Kazakhstan;
- issued to foreigners, stateless persons, foreign legal entities and the international organizations.

2) On activity volume:

- the general - for separate kinds of activity without restriction of validity period;
- the single - for separate kind of activity within the allowed term, volume, weight or quantity (in natural or monetary value), and also in the gambling sphere within the term established by the Law of the Republic of Kazakhstan "On gambling", and on class by activity in the organization of construction of residential buildings due to attraction of money of shareholders within the volume established by the Law of the Republic of Kazakhstan "On individual share in housing construction";
- the operational - for by separate operations in bank activity, classes in insurance activity (insurance classes).

3) In the sphere of export and import of goods:

- the general license - the license, granted to the participant of the foreign trade activity on the basis of the solution of the member state of the Customs union and providing the right for export and (or) import of a separate type of goods in the quantity defined by the license;
- the exclusive license - the license providing to the participant of the foreign trade activity an exclusive right to export and (or) import of a separate type of goods;

- the single license - the license, granted to the participant of the foreign trade activity on the basis of the foreign trade contract (contract) and providing the right for export and (or) import of licensed goods in a certain quantity.

Special conditions of validity of licenses should be mentioned for:

- categories of the licensee when licensing activity in the sphere of architecture, town planning and construction according to the Law of the Republic of Kazakhstan "On architectural, town-planning and construction activity in the Republic of Kazakhstan";
- branch of the industry sphere in which the licensed activity is carried out.

(8) Currency control

The primary legislative enactments pertaining to the currency and export control are the Law of the Republic of Kazakhstan on Currency Regulation dated June 13, 2005 and a number of various resolutions and regulations of the National Bank of the Republic of Kazakhstan and the Government (collectively, the "Currency Law"). Under the Currency Law, persons involved in currency transactions are divided into two groups, (1) residents (individuals permanently residing in Kazakhstan; all legal entities formed under the Kazakhstan laws and located in Kazakhstan including representative offices and branches thereof in Kazakhstan and outside of Kazakhstan; diplomatic, commercial and other official representations of Kazakhstan located outside of Kazakhstan) and (2) non-residents (all categories of individuals and legal entities not included under the "residents" category).

The Currency Law provides that settlements between a non-resident and resident can be done in any currency as agreed between the parties, while settlements between the residents can only be made in Tenge (the "KZT"), national currency. Thus, Contracts where one party is Kazakh entity and other party is a non-resident allow settlements to be legally made in foreign currencies. Residents and non-residents may buy and sell foreign currency on the internal currency market without limitations, regardless of the purpose, and without presenting the currency contract or other documents substantiating the purpose of the sale and purchase of foreign currency.

The existing currency control authority in Kazakhstan is National Bank of Kazakhstan ("NBK").

The currency control is exercised in the following regimes: (i) registration of currency operations and (ii) notification about currency operations.

NBK 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 NBK 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 non-residents in the form of financial and commercial loans, 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.

NBK 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 non-resident exceeds the equivalent of 500,000 USD; 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 non-resident to return property (funds) exceeds the equivalent of 100,000 USD.

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 spheres 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 are subject to notification:

- certain categories of direct investments;
- certain banks' own operations;
- securities acquisition and placement;
- operations with derivative financial instruments between residents and nonresidents.

Residents should notify on 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 non-resident, or by a non-resident 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 100,000 USD.

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 NBK 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 non-residents as settlement for the import of goods (work, services) in case the non-residents fail to perform or incompletely perform their obligations within the transaction-stipulated deadlines.

NBK 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.

(9) Tax Regime

Kazakhstan tax issues are basically regulated by The Code of Kazakhstan "On Taxes and Other Obligatory Payments to the Budget" (the "Tax Code"). The Tax Code has been amended many times and as usual, those amendments are effective from the first January of each year.

The main taxes affecting investors operating under the current tax regime are: a) corporate income tax; b) tax withheld at the source of payment; c) value added tax; d) individual income tax; e) social income tax; f) customs duties and levies. The other taxes and levies that businesses operating in Kazakhstan can be subject to are excise duties, property tax, land tax, tax on transport vehicles.

The tax period (year) in Kazakhstan constitutes one calendar year. Kazakhstan's tax system operates on the self-assessment principle. The tax authorities are responsible for verifying the accuracy of calculations and the timeliness of the payment of taxes.

9.1 Value Added Tax

The value-added tax ("VAT") and excise duties plus a selection of nominal fees are the applicable indirect taxes. VAT is applicable to almost all turnover with minor exceptions. Therefore, in general all turnover inside of Kazakhstan are subject to 12 percent VAT unless zero-rated or exempted. Legal entities and non-residents carrying out activities in Kazakhstan through a permanent establishment shall be payers of VAT.

A legal entity with structural subdivisions may register its subdivisions as separate payers of VAT. Any entity with sales or turnover for any twelve-month period in excess of 30,000 times the monthly assessment index (approximately 308,666 USD), is required to apply for VAT registration with the tax authorities. Only registered payers of VAT are entitled to charge VAT and claim credits for input VAT incurred.

As mentioned above normal VAT rate is now 12%, except for those goods and services which are specifically exempt and those to which a zero rate applies. VAT is charged at 0% for the export of goods and for certain international transportation services.

VAT payers are required, on either a monthly or quarterly basis, to file VAT declarations and pay corresponding VAT liabilities for each reporting tax period, by no later than the 15th day of the month following the tax period. A register of invoices for goods (work, services) purchased during the tax period should be submitted along with the VAT declaration.

9.2 Custom Duties

When clearing goods through the customs boundary of Kazakhstan the following types of customs payments shall be paid: 1) customs duty; 2) customs levy for customs processing; 3) customs levy for storage of goods; 4) customs levy for customs escort; 5) levy for issuing licences by the customs authorities of Kazakhstan; 6) levy for issuing qualification certificates of specialists on customs processing; 7) payment for a preliminary decision.

The customs duty rates payable on goods imported into Kazakhstan are dependent upon the type of goods imported. Only in very limited cases are goods exempt from import duties. Such cases include exemptions from import duties. These include exemptions from imports made by subsurface users, where a relevant exemption is envisaged in the corresponding subsurface use contracts.

Customs values are generally determined by the declared value of goods plus transportation and insurance-related expenses.

9.3 Excise Duties

Goods manufactured in the territory of Kazakhstan and those imported into the territory of Kazakhstan, as well as certain activities, are subject to excise duties. Legal entities producing, importing, selling, bartering with or transferring excisable goods free of charge, or engaging in excisable activities, are required to pay excise duties.

The following goods and activities are subject to excise duties: all types of alcohol; alcohol products; tobacco items; other items containing tobacco; petroleum (except for aviation fuel), diesel fuel; passenger cars (except for cars with hand controls which are specifically designed for disabled); crude oil, natural gas liquids; gambling business and lottery activities. The turnover from the export of excisable goods is not subject to excise duties.

The rates of excise duties are approved by the Government of Kazakhstan as a percentage of the value of the goods and (or) as a fixed amount per unit of measurement.

9.4 Corporate Income Tax, Dividends and Interest

Resident legal entities of Kazakhstan and non-resident legal entities that carry out activities in Kazakhstan through a permanent establishment or receive income from sources in Kazakhstan shall be recognised as payers of Corporate Income Tax (“CIT”).

Taxable income includes income received from the sale or provision of goods (work, services), capital gains, income from financial activities and other income. Resident legal entities, including those entities with foreign participation, are taxable on their worldwide income. Non-resident legal entities are taxable only on Kazakhstan source income. The tax base for CIT includes taxable income and income at the source of payment. Taxable income is calculated based on aggregate income from activities, less total allowable deductions for the reporting period.

The regular CIT is 20%. In addition to CIT, permanent establishments (including registered branches) of foreign legal entities are subject to 15% tax on their net income. Similarly, Kazakhstan legal entities are subject to a dividend distribution tax at a rate of 15%. In both cases, an international double tax treaty could reduce the 15% tax net profit / withholding tax rates (for example, under double tax treaties with The Netherlands and Great Britain up to 5%).

Income generated by the business activities of a permanent establishment in Kazakhstan is taxable under the legislation of Kazakhstan without regard to where payments are received. Kazakhstan legal entities are taxed on their worldwide income.

Interest is subject to withholding tax in Kazakhstan. Pursuant to the Tax Code, income in the form of interest of a nonresident foreign legal entity from the sources in Kazakhstan shall be

subject to tax at the source of payment at the rate of 15 percent unless reduced by a double tax treaty. There are certain restrictions with respect to the deductibility of interest payable to non-residents.

9.5 Tax Audits and the Review Process

Tax audits are carried out by the tax authorities of compliance with the legislation of Kazakhstan concerning taxes. Tax audits are subdivided into the following types: documentary audit; raid audit; timing inspection.

Documentary audits shall be subdivided into the following types: integrated audits; thematic audit; cross audit.

Raid audits are carried out by tax service authorities with regard to certain taxpayers for issues of compliance by them with certain requirements of the legislation of Kazakhstan, and in particular: accounting registration of taxpayers by tax bodies; accuracy of use of cash registers with fiscal memory; licenses and other permit documents, one-off voucher; compliance with the rules for licensing and requirements concerning production, storage and marketing of certain types of excisable goods and types of activity which are within the scope of the tax service authorities.

As to the timing inspections, they are carried out by tax authorities for the purpose of establishing actual income of a taxpayer and actual costs connected with the earning of income.

The performance of a tax audit does not suspend the activities of the taxpayer, except for the cases established by the legislative acts of Kazakhstan (in practice such suspensions happen seldom). The tax body has the right to audit structural subdivisions of a legal entity irrespective of whether a tax audit of the legal entity itself was conducted.

In accordance with law, integrated audits are carried out not more frequent than once per year while thematic not more frequent than once per half year in respect of a specific type of tax or budget liability. Generally, the period for conducting tax audits, which is indicated in the issued orders must not exceed thirty working days from the time of handing the orders.

The base for the performance of a tax audit is an audit order issued by the tax authority. The order must also be registered, signed by the top official of the tax service authority or by the person substituting for him and bear official seal of the tax authority and the registry stamp of the Prosecutor's office. Only one tax audit may be carried out on the basis of one order. The tax audit starts from the moment of handed to a taxpayer of an order.

Upon the end of a tax audit the official person of the body of the Tax Service shall compile the act of the tax audit.

Upon the completion of a tax audit the Tax Service Body on the basis of the results recorded in the tax audit act shall issue a notice on assessed amounts of taxes and other obligatory payments to the Budget and penalties, which shall be directed to the taxpayer within the period established according to the Tax Code. When there is no violation of tax legislation is established upon the completion of a tax audit, the notice upon the results of the tax audit shall not be issued.

The Tax Code provides the procedure for appeal of tax audits against the results of a tax audit. Taxpayer may appeal results of the tax audit to the ranking Tax Service Body or to the Kazakh

court. In practice appealation is filing with ranking Tax Service Body and then with the appropriate court.

9.6 Individual Income Tax

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.

9.7 Subsoil User Taxes and Special Charges

1) Subsoil user 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.

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

- **Commercial discovery bonus** is payable by subsoil users in cases provided for by legislation.

The item subject to commercial discovery bonus is the physical volume of recoverable mineral reserves approved for the contract area. The bonus amount is determined based on the chargeable item, tax base and tax rate. The charge rate is 0.1% of the tax base.

- **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.

The amount of historical costs is calculated by the authorized state agency.

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 Kazakstani 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 Government Resolution of Kazakhstan.

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.

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%.

9.8 Social Tax

The payers of Social Tax are Kazakhstani legal entities and foreign companies operating in Kazakhstan via permanent establishment, including via a branch/representative office. The taxable item are the employer's expenses paid to employees (resident and non-resident), and foreign personnel income. The general rate of Social Tax is 11%.

9.9 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.

The special tax regime for agricultural or farming enterprises provides for a special state budget settlements procedure, which is based on a unified land tax payment and covers agricultural and farming enterprises carrying out certain types of activities.

9.10 Property Tax

1) Corporate Property Tax

The corporate property 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 ownership, the 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 buildings, dacha buildings, garages and other constructions, structures or premises or unfinished construction facilities, since the moment of residence or operation.