

ÆQUITAS

**Doing Business
in Kazakhstan:
Legal Basics**



Almaty 2016

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 July 2016, 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

TABLE OF CONTENTS

- 1. General Information on Kazakhstan 5
- 2. Legal System and Specifics of Business Regulation in Kazakhstan 7
- 3. Legal Entities..... 9
- 4. Antimonopoly Regulation and Natural Monopolies14
- 5. Special Economic Zones17
- 6. Investment18
- 7. Subsoil21
- 8. Land Regulation25
- 9. Currency Regulation.....26
- 10. Securities Market29
- 11. Permits and Notifications.....30
- 12. Taxation31
- 13. Customs Regulation36
- 14. Public-Private Partnership38
- 15. Labor Relations and Foreign Labor Engagement40
- 16. Procedure for Foreign Citizens' Entry and Stay in Kazakhstan43
- 17. Personal Data and Protection Thereof.....45
- 18. Intellectual Property.....47
- 19. Dispute Resolution; Recognition and Enforcement of Foreign Judgments and Arbitral Awards49
- Planning to Open Business in Kazakhstan? AEQUITAS Will Be Happy to Help53
- AEQUITAS – a Leader on the Kazakhstan's Legal Services Market.....54

LIST OF ABBREVIATIONS

JSC – joint stock company

MCI – monthly calculation index (in 2016, the MCI is 2,121 tenge)

RK – Republic of Kazakhstan

CU, Customs Union – Customs Union of Russia, Belarus and Kazakhstan

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

LLP – limited liability partnership

Work permit – foreign labor engagement permit

1. GENERAL INFORMATION ON KAZAKHSTAN

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

Major cities. Astana (capital since 1998), Almaty (former capital), Karaganda, Shymkent, Atyrau and Aktau.

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.

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

Population and ethnic composition. As of 1 December 2015, Kazakhstan's population is above 17 million; 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%.

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.

Currency unit. Tenge (KZT), 1 tenge = 100 tiyn; 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.

Administrative subdivisions. 14 oblasts and 2 cities of national significance (Almaty and Astana).

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.

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 2013, it is planned to complete the construction of the Kazakh section of the Western Europe – Western China international motor road corridor.

Ratings. According to the 2016 World Bank report, Kazakhstan ranks 41st in the **Doing Business** rating.

According to the World Economic Forum data, Kazakhstan is ranked 42nd out of 140 countries in the **Global Competitiveness Index**.

In 2015, Kazakhstan ranked 65th out of 102 in the Rule of Law Index of **the World Justice Project** (international nongovernmental organization).

In the 2015 **Legatum Prosperity Index** Kazakhstan ranked 56th out of 142 countries.

Corruption Perceptions Index (CPI): Kazakhstan ranks 126th out of 175.

Global Peace Index: 87th out of 162.

* * *

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 second half of 2015 is characterized by adoption of a big package of new regulatory legal acts and considerable revision of the existing regulations in various spheres of public life, including business. The major factors that triggered the substantial revision and amendment of the Kazakh legislation were Kazakhstan's accession to the WTO, adoption of the new Presidential Plan "100 Concrete Steps" to implement five institutional reforms, 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 sphere 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 sphere of entrepreneurship, in particular, the principles of social responsibility of entrepreneurs, limited participation of the state in entrepreneurial activities, self-regulation in the sphere 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.

* * *

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, 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.

¹Please 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 (with certain exceptions) 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 non-resident for the purposes of currency regulation, hence, the possibility to make payments to RK residents in foreign currency; 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 sphere.

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.

* * *

4. ANTIMONOPOLY REGULATION AND NATURAL MONOPOLIES

4.1 *Economic Concentration Control*

The **economic concentration transactions**, 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 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 one of the following conditions is present:

- 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; or
- one of the persons participating in the transaction is a market entity occupying a dominant or monopolistic position on the relevant commodity market.

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 spheres** in Kazakhstan encompass 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; telecommunications and postal services. The list of services (goods, work) subject to regulation is approved by the RK Government.

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

- render services and perform other activities not relating to natural monopoly spheres;
- own property unrelated to the production and provision of regulated services (goods, work);
- hold shares (participation interests) or otherwise participate in the activities of commercial organizations;
- charge for the regulated services (goods, work) in excess of the established amounts; and

- charge additional payment or otherwise impose additional obligations unrelated to the subject of services.

Natural monopoly entities are obligated to provide services (goods, work) subjected to regulation at the tariffs (prices, fee rates) as approved by the authorized agency; and in case a limit on a tariff (price, fee rate) is approved, provide to all consumers the regulated services (goods, work) at the uniform tariff (price, fee rate) levels not to exceed the tariff (price, fee rate) limit.

Besides, the state regulates the prices for goods (work, services) in the sphere of rail transport, electric and heat power generation, oil products manufacture, oil and gas transportation, civil aviation, port operations, telecommunications and postal services. 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 financial statements, 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).

* * *

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.

Each SEZ has been set up in order to develop a particular sector of economy. For example, the "Ontustik" SEZ was created to develop textile industry; "Astana – the New City" SEZ – in order to build, on an expedited basis, the capital's new administrative and business center and to open new productions in the Ishim Left Bank Industrial Development Park via attracting investments and using advanced construction technologies, as well as to create a modern infrastructure; and "Information Technologies Park" SEZ – in order to develop the IT branch of economy.

The resolution to set up a SEZ is adopted by the RK President based on the RK Government's submission. 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.

The foreign labor engagement permits for work in the SEZ territory are issued in a simplified procedure, without searching for appropriate candidates on the domestic labor market.

* * *

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, or strategic 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).

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 and without work permits, for the entire construction period of the investment project and for one year after the facility commissioning.

* * *

7. SUBSOIL

7.1 *Subsoil Use Legal Regulation*

The basic law governing subsoil use issues relating to all minerals is the RK Law on Subsoil and Subsoil Use (Subsoil Law) adopted on 24 June 2010 (replacing the 1996 RK Law on Subsoil and Subsoil Use and the 1995 RK Petroleum Law). An important block of subsoil legislation is constituted by multiple subordinate acts, mostly Government decrees, adopted in furtherance of the Subsoil Law.

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

Starting from 1999, one could observe a clear tendency towards toughening of the subsoil use legal regime in Kazakhstan, "environmentalization" of legislative framework and local producers support policy. The latest amendments to the RK Subsoil Law adopted on 29 December 2014 are intended to mitigate the subsoil legal regulation, in particular, contemplating to provide for the state's pre-emptive right only with respect to strategic deposits and reducing the number of expert reviews of the contract and project documents. In certain (limited) cases, a simplified procedure for obtaining the exploration right is provided for, etc.

The most important international treaty relating to the subsoil use sphere 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 within the statutory deadlines:

- state geological study of subsoil;
- exploration;
- production;
- combined exploration and production; and
- construction or operation of underground facilities unrelated to exploration or production.

Subsoil use right may be permanent or temporary; alienable or inalienable; paid or free-of-charge.

Owners and possessors of land plots may extract common minerals and groundwater, within extraction volumes not to exceed 50 cu. m per day, for their own needs based on a permanent and free-of-charge subsoil use right. All other types of subsoil use operations are performed based on a temporary and paid use of subsoil.

Subsoil use right may be granted to local and foreign legal entities and individuals. The subsoil users must be business entities (except for persons extracting common minerals and groundwater for own needs).

Subsoil use rights may also be granted to several persons under the same contract. Such persons are joint right holders and are jointly and severally liable for the obligations arising under the contract.

7.3 Origination of Subsoil Use Right

Granting of subsoil use right by the state means endowing a person with a subsoil use right directly by the state by way of entering into a contract.

As a general rule, the contract for subsoil use operations is entered into based on the results of competitive bidding, which may be conducted in the form of an auction or a tender.

The legislation also provides for the cases where subsoil use right may be granted without competitive bidding, based on direct negotiations (for instance, to national companies or to a person making commercial discovery under an exploration contract, or in case the exploration right is granted under the simplified procedure, etc.).

In certain cases, subsoil use right is granted on the basis of the authorized agency's written approval or a contract (for example, with respect to common minerals used in road construction).

The contract is to be drafted by the competitive bidding winner or by the person contracted based on direct negotiations and is to be approved by the competent authority. Prior to signing, the contract is subject to mandatory legal due diligence (expert review). The draft contract is also to pass economic expert review. No expert reviews are required on draft contracts (agreements) for state geological study of subsoil and model exploration contracts concluded in case of applying the simplified procedure for granting the exploration right.

Prior to entering into the contract, the competitive bidding winner is also to prepare the project documents and work program defining the exploration and/or production conditions for the contract term, which are to be approved in accordance with the statutory procedure.

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 on 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 invalidated from the moment of its execution.

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.

The transfer of subsoil use right on the basis of universal succession is possible in case of legal entity reorganization.

The subsoil use right is terminated in case the subsoil use contract expires, unless the parties agree to extend the contract term.

The competent authority may early terminate the contract on a unilateral basis in the following cases:

- subsoil user fails to rectify more than 2 breaches of its contractual obligations within the period specified in the competent authority's notification;
- subsoil user transfers the subsoil use right or subsoil use right-related objects without competent authority's consent (except where no such consent is required);
- financial obligations established by the subsoil use contract are performed by less than 30 percent for two consecutive years.

A breach of contractual provisions fully rectified by the subsoil user within the timeframes established in the competent authority's notification does not constitute a ground for early contract termination on a unilateral basis.

The Subsoil Law provides for additional grounds on which the competent authority may unilaterally terminate contracts relating to strategic deposits the list of which and the criteria for qualifying them as strategic are approved by the RK Government.

Subsoil users may claim early contract termination in court or unilaterally withdraw from the contract on the grounds stipulated by the contract.

Contract termination does not exempt the subsoil user from obligations to relinquish the contract area and clean up the consequences of subsoil use operations.

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

The state's pre-emptive right to acquire subsoil use rights and related objects was first introduced in Kazakhstan in 2004.

The state's pre-emptive right is the right of the state to acquire on a first priority basis the subsoil use right (a part thereof) being alienated and/or the objects related to the subsoil use right.

Following amendments to the Subsoil Law of 29 December 2014, the state has pre-emptive right only in respect of contracts for subsoil blocks or deposits of strategic importance.

7.5 Local Content Requirements

Kazakhstan is now largely supporting local producers, which finds reflection in the provisions of the Subsoil Law and many bylaws. However, following Kazakhstan's accession to the WTO, provisions on subsoil user's obligations regarding local content in goods were excluded from the Subsoil Law, as applicable to the newly signed contracts. These requirements still apply to services.

The local content obligations are *mandatory* conditions for subsoil use contracts and represent concrete quantitative indicators.

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

- tender-based engagement of local work and service providers during subsoil operations, if such services meet the standards, price and quality characteristics of similar services provided by non-residents, 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). This provision does not apply to the acquisition of goods when conducting activities under contracts signed after 1 January 2015.

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.

* * *

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.

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.

Foreign citizens, stateless persons and foreign legal entities cannot privately own land located in the Kazakhstan's border zone and near-border strip territory.

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) and cannot be alienated or transferred. 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 May 2016 the above amendments were put under moratorium till the end of 2016.

* * *

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 **non-residents** (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 non-residents may be in any currency.

Non-residents 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.

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 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.

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 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.

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 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 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 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.

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.

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. In case of purchasing foreign currency for national currency in an amount exceeding the equivalent of USD 100,000, the individual resident, who 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.

* * *

10. SECURITIES MARKET

All transactions with securities in Kazakhstan are subject to mandatory state registration. Starting 1 January 2013, the only organization to maintain the system of securities holders' registers is the Unified Securities Registrar JSC.

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.

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

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. 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.

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, or 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.

* * *

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 the export and import sphere:

- **general license** –a license issued to foreign trade participants based on a CU member state's resolution and entitling to export or import a certain type of goods within certain quantities;
- **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.

* * *

12. TAXATION

12.1 *General Provisions*

The key taxation provisions are established by the RK Tax Code adopted in 2008 and providing 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.)

Kazakhstan has entered into international treaties for the avoidance of double taxation and reduction of income tax and capital tax rates with more than 40 states. The treaties apply to the income (corporate and individual) tax and property tax.

12.2 *Resident and Nonresident Income Taxation*

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

Recognized as non-resident's **permanent establishment** is a permanent place of activities through which the non-resident 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 non-resident'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 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 and foreign companies performing activities in Kazakhstan via branches/representative offices, and persons importing goods into the RK territory.

The items subject to VAT are taxable turnover of goods (work, services) and taxable import. VAT is assessed in cases where the minimum turnover exceeds 30,000 MCI per year.

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

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%.

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 liquid 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, coal and gas condensate 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

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 the RK Tax Code.

- **Commercial discovery bonus** is payable by subsoil users under contracts for the extraction of minerals and/or combined exploration and extraction for each commercial discovery of minerals in the contract area, including discovery during additional exploration of deposits.

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 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.

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%.

12.9 Social Tax

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

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 Unified Land Tax

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.

12.12 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.

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

12.14 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.

12.15 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.

* * *

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 of the Eurasian Economic Union and the Unified Customs Tariff of the Eurasian Economic Union, are in effect. The key aspects of unified customs regulation are stipulated by the Treaty on 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 60 EUR per main list of goods declaration and 25 EUR per each additional list of goods declaration;
- **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, volume or other characteristics). Customs benefits may be granted in the form of deferral of, or exemption from, customs duties payment;
- **export customs duties** on exported goods at the rates provided for by the domestic legislation of the CU member state. The export customs duty rates in Kazakhstan are established by a special decree of the RK Government;
- **import VAT** at the rates provided for by the RK domestic legislation. 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 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 in accordance with the RK domestic legislation. The excisable goods are alcohol products, tobacco products, gasoline (except for aircraft gasoline), diesel fuel, crude oil, certain transport vehicles and other goods. The excise tax rates are established by the RK Tax Code.

When exporting goods from Kazakhstan, VAT is payable at zero rate, subject to the goods export fact confirmation.

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

13.3 Customs Procedures

The CU legislation provides for 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 CU goods and circulate freely in the entire CU territory without any customs restrictions.

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

The **temporary importation (admission) of goods** is a customs procedure whereunder the imported goods retain the status of foreign goods and are subject to removal from the CU territory upon expiration of the temporary importation period.

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 international agreements of the Customs Union member states and/or decisions of the Customs Union Commission.

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 Clearance

When goods and vehicles cross the RK customs border or when changing the customs procedure, it is necessary to fill out a customs declaration.

Under the current transitional provisions, the customs declaration of goods is made at the place of declarant's location (registration), while in the future the customs declaration will be made at any customs authority of the CU member states.

* * *

14. PUBLIC-PRIVATE PARTNERSHIP

Recently, Kazakhstan has been going proactive in attempting to promote the public-private partnership (PPP) whose key purport is to develop infrastructure for the public good, joining the resources and experience of the state and private sector in branches of economy traditionally referred to the state's sphere of responsibility, on the basis of balanced distribution of risks, benefits and expenses, and the rights and obligations.

In 2008, Kazakhstan set up a specialized organization for concession issues – Kazakhstan Public-Private Partnership Center JSC, whose key subject of activities is expert review and monitoring of concession projects, also introducing the Private-Public Project Support Center designed to perform the role of the unified PPP projects operator at the national and (if necessary) at the regional level.

On 23 November 2015, the new Law "On Public-Private Partnership" was enacted.

The Law became an independent regulatory act to govern the public-private partnership relations and concretize many concepts and terms previously non-defined or imprecisely defined by legislation. In particular, the Law defines the concept of the PPP and sets out its features. This is rather important, because it facilitates selection of the necessary legal regime applicable to this or that form of interaction with the state in commercial sphere.

The Law has considerably expanded the range of contractual types of the PPP, which can be implemented through such contracts as concession, trust management of state property, and lease of state property, as well as contracts for process development, prototype manufacture, pilot testing and small-scale production, life cycle contracts, service contracts and other contracts that meet the PPP features.

The form of private partner's participation has been expanded to the maximum and provides for participation in the financing, design, creation, reconstruction, and operation of a PPP facility, and for the transfer of property and property rights for PPP implementation.

Quasi-public sector entities may participate in PPP projects in the following forms:

- shared participation through establishment of legal entities or acquisition (alienation) of shares (interests in the charter capital) in legal entities;
- transfer of exclusive rights to intellectual property;
- service support, including services for the transfer of technologies, support of innovations, consulting, engineering, training and advanced training of personnel;
- services of science and technology parks, business incubators, special economic and industrial zones;
- construction, creation, reconstruction, modernization and/or operation of facilities;
- export promotion, etc.

The regulation of PPP has been considerably decentralized: in addition to the Government and other central authorized agencies, now the maslikhats, National Chamber of Entrepreneurs and PPP Development Center can participate in the PPP regulation. Local authorities are made more independent to implement the PPP projects based on a set of standardized documents.

It is possible to select the private partner through a tender (open/closed, two-stage/simplified) or on the basis of direct negotiations. According to the general rule, it is supposed that the private partner will be selected through open tender. In exceptional cases determined by the Government, closed tender may apply to projects relating to the RK defense, state security, or environmental protection.

The requirements regarding local content and provision of annual goods, work and services procurement program are no longer in effect, which is explained by Kazakhstan's obligations in connection with accession to WTO.

The Law offers less cumbersome and red-tape system of access to PPP. Nevertheless, it does not resolve all problems because of which the private capital is not eager to get into the traditional spheres of state's responsibility. For example, the issues of limit on state support to concessionaires, indexation of long-term tariffs, preferential prudential standards for bank funds allocated to finance PPP projects, use of arbitration for real estate-related disputes, etc., remain unresolved. Therefore, the need to improve the PPP legislation and lack of attractive investment projects portfolio are still on the agenda.

Besides, PPP is a risky area of investment, which is also an objective preventive factor. Traditionally identified PPP risks are political, judicial, force majeure, market, currency, interest rate, operational, administrative, raw shortage, financial, legislative amendments and other. Fair distribution of risks during PPP projects implementation can make PPP somewhat more attractive to investors, financial institutions, the state and the public. Time will show how the new and generally quite progressive Law will be able to boost the PPP development in Kazakhstan.

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.

* * *

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 sphere 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 Agreement*

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

Employment agreements with RK non-residents are not allowed to be executed (with certain exceptions) until the non-resident 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 agreement, 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 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 agreement.

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 corporate or 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 agreement and in the process of work.

15.4 Foreign Labor Engagement

15.4.1 Foreign Labor Engagement Permit

Foreign employees may enter Kazakhstan for independent job placement or on employer's invitation. There are three types of work permits for foreign labor engagement:

- foreign labor engagement permits issued to employers (work permits);
- independent job placement permits issued directly to employees of certain occupations; and
- permits to labor immigrants arriving to Kazakhstan as domestic workers in order to perform work (render services) for individual employers in their households on the basis of labor immigrant permits issued by internal affairs authorities.

In order to determine the conditions and procedure of issuance and extension of the first two types of work 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;
- **third category** – specialists who meet the established qualification requirements;
- **fourth category** – qualified workers who meet the established qualification requirements.

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 non-residents 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;
- members of sea, river, air, railway and motor transport crews;
- non-residents 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 the economically active population. Starting 2012, quotas are also established for priority projects and/or countries of origin.

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:

- 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.

Work permits are issued for a term from 1 to 3 years, with or without the right of extension, depending on the foreign employee's category. Work permits for a priority project are issued for the project implementation term.

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.

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 medical certificate confirming absence of diseases preventing work in the chosen specialty and a medical insurance, 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.

* * *

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.

RK visas are subdivided by types into immigrant and non-immigrant visas. Legislation provides for 13 visa categories (of which 8 categories are non-immigrant visas and 5 categories are immigrant visas), each having subcategories, depending on the purpose of stay in Kazakhstan. The most business-relevant visa categories are investor visas, business 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 visas are issued to foreign citizens traveling to, or staying in, Kazakhstan for business purposes: business trip; participation in business negotiations; conclusion of contracts; installation, repair and maintenance of equipment, participation youth, student or school exchange programs; provision of consulting or audit services; humanitarian aid conveying; participation in conferences, forums, exhibitions, cultural, scientific and other events.

Labor activities visas are issued to foreign citizens traveling to Kazakhstan in order to submit documents to the authorized agency to obtain independent job placement permits; to work, if they have a work permit or an independent job placement permit (visas issued both to foreign employees and their family members coming with them); to perform entrepreneurial activities (set up joint ventures), unless otherwise provided for by legislation or by an international treaty.

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

Moreover, the citizens of nineteen countries that demonstrated the highest investment activity in Kazakhstan (Australia, Hungary, Italy, Monaco, Belgium, Spain, the Netherlands, Norway, Sweden, Malaysia, United Arab Emirates, Singapore, United Kingdom, United States, Germany, Finland, France, Switzerland and Japan) are allowed visa-free entry into Kazakhstan in the period from 16 July 2015 to 31 December 2017, if their term of stay does not exceed 15 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.

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 19 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, starting April 2016, 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.

* * *

17. PERSONAL DATA AND PROTECTION THEREOF

17.1 General Provisions

In November 2013, Kazakhstan put into effect a Law on Personal Data and Protection Thereof.

The Law's key objective 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 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 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 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.

* * *

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 sphere of intellectual property protection.

The main authority performing registration of intellectual property rights and subject matters is the Intellectual Property Department of the RK Ministry of Justice.

18.1.2 *Subject Matters of Intellectual Property*

The protected **subject matters of intellectual property** 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 subject matters arise by virtue of the fact of their creation or as a result of their legal protection granted by the authorized agency.

18.2 *Legal Protection of Trademarks*

In Kazakhstan, 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.

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. 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.

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. 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.

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.

The RK Law on Arbitration of 8 April 2016 sets out the key provisions relating to the proceedings in courts of arbitration.

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.). The review of property and non-property disputes between entrepreneurs and legal entities, as well as corporate disputes, is referred to the competence of specialized inter-district economic courts.

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 – 50% of the 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.).

Certain categories of cases may be reviewed in simplified proceedings, particularly, if the claim value does not exceed 700 MCI for legal entities and 200 MCI for individual entrepreneurs and individuals. The cases in simplified proceedings are reviewed without summoning the parties, based on the written documents provided by them.

Before the court withdraws to the consultation room, 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 also take advantage of these rights in the courts of appellate and cassation instances.

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.

Motions to dispute judicial acts in a cassation procedure are subject to state duty, the amount of which is as follows (per each petition or motion):

- in non-property disputes – 50% of the amount of state duty charged when filing a non-property related statement of claim; and
- in property disputes – 50% of the amount of state duty calculated based on the amount disputed by the claimant.

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 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 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.

The cassation instance court verifies the lawfulness and justifiability of judicial acts according to the materials available in the case and within the arguments presented in the motion of the applicant and/or protest of the prosecutor.

The case is heard by a judicial panel comprising at least three judges. The case review period is 30 days of the date the case is received by the court.

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.

19.2 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.

19.3 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, or on the basis of reciprocity.

The conditions and procedure for recognition and enforcement of foreign judgments and arbitral awards are determined by the Kazakhstan legislation, unless otherwise stipulated by an international treaty.

A foreign judgment or arbitral award may be filed for enforcement within 3 years from the date its voluntary execution period has expired. This period, if missed for a valid reason, may be reinstated.

Kazakhstan has acceded to the following international treaties and 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 and UAE.

* * *

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.

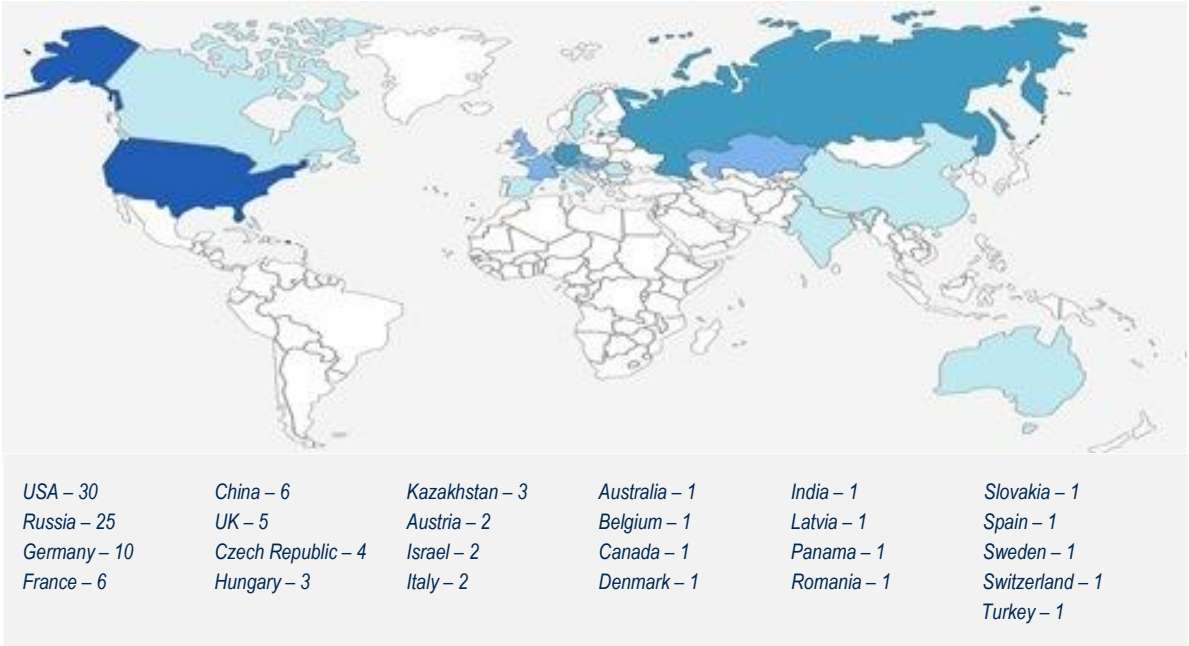
When rendering legal support to set up and register legal entities, branches and representative offices, AEQUITAS provides "turnkey" services, from the drafting of foundation documents to opening of bank accounts and obtainment of corporate seal. The client does not have to be present in Kazakhstan until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

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

AEQUITAS Registration Team's Work in Numbers (2010–2016)

- 69** registration projects
- 38** re-registration projects (for different reasons)
- 47** foundation documents amendment projects
- 26** management change projects
- 18** liquidation projects

Project Geography



* * *

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

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

*"They consistently deliver good service and good quality, year in year out."
Chambers Asia Pacific, 2014*

*"An excellent customer-oriented team of lawyers."
Chambers Global, 2013*

AEQUITAS, a Kazakhstan national law firm, was founded in 1993. One of the persons to found AEQUITAS was Professor Yuri G. Bassin, Doctor of Law, a forefather of civil law science in Kazakhstan.

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, Clifford Chance, Freshfields Bruckhaus Deringer, Linklaters, Debevoise & Plimpton, Baker Botts, EPA&P, Pepeliaev Group, ALRUD 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 lowering 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), American Bar Association (ABA), Association of International Petroleum Negotiators (AIPN), European Business Association of Kazakhstan (EUROBAK) and Kazakhstan Petroleum Lawyers' Association (KPLA).

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 Astana (Kazakhstan).

CONTACT INFORMATION

You are welcome to send enquiries for legal services or additional information to aequitas@aequitas.kz.

Address: 47 Abai Ave., Office 2, Almaty 050000, Republic of Kazakhstan

Tel.: +7 (727) 3 968 968

Fax: +7 (727) 3 968 990

E-mail: aequitas@aequitas.kz

Please see more information at our official website www.aequitas.kz.

* * *