

**DOING BUSINESS  
IN KAZAKHSTAN:  
LEGAL BASICS**



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.

**Dear Friends,**

We are presenting the review "Doing Business in Kazakhstan: Legal Basics" (the "**Review**") containing key information on 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 September 2023, will prove helpful to guide you through the Kazakhstan's legal field.

AEQUITAS Team

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## LIST OF TERMS AND ABBREVIATIONS

Abbreviation	Meaning
<b>AIFC</b>	<a href="#">Astana International Financial Centre</a>
<b>ARDFM</b>	<a href="#">Agency</a> for Regulation and Development of Financial Market
<b>Atameken</b>	National Chamber of Entrepreneurs of Kazakhstan "Atameken"
<b>CIS</b>	Commonwealth of Independent States Current members: Republic of Azerbaijan, Republic of Armenia, Republic of Belarus, Republic of Kazakhstan, Kyrgyz Republic, Republic of Moldova, Russian Federation, Republic of Tajikistan, and Republic of Uzbekistan
<b>CIT</b>	Corporate income tax
<b>KCSD</b>	Central Securities <a href="#">Depository</a>
<b>EAEU, Eurasian Economic Union</b>	Eurasian Economic Union of the Republic of Armenia, Republic of Belarus, Republic of Kyrgyzstan, Republic of Kazakhstan and Russian Federation. EAEU <a href="#">information portal</a> .
<b>EEC</b>	<a href="#">Eurasian Economic Commission</a>
<b>FL</b>	Foreign labor
<b>GDP</b>	Gross domestic product
<b>IE</b>	Individual entrepreneur
<b>IIC</b>	Individual income tax
<b>IZ</b>	Industrial zone
<b>JSC</b>	Joint stock company
<b>LLP, partnership</b>	Limited liability partnership
<b>MCI</b>	Starting 1 April 2022, one monthly calculation index is KZT 3,180

Abbreviation	Meaning
	For the purpose of fine sanctions, taxes and other payments in 2022, Kazakhstan applies the MCI established starting 1 January 2022, which is KZT 3,063
<b>MS</b>	In 2022, the minimum salary is KZT 60,000
<b>MSMI</b>	Mandatory social medical insurance
<b>NBK</b>	<a href="#">National Bank of Kazakhstan</a>
<b>OECD</b>	<a href="#">Organization</a> for Economic Cooperation and Development At the time of writing, 38 countries are the OECD members
<b>PPP</b>	Public-private partnership
<b>RK, Kazakhstan</b>	Republic of Kazakhstan
<b>RLA</b>	Regulatory legal act
<b>SEZ</b>	Special economic zone
<b>SM</b>	Securities market
<b>UASEC</b>	Unified accounting system of employment contracts
<b>VAT</b>	Value added tax
<b>Work Permit</b>	Foreign labor engagement permit
<b>WTO</b>	World Trade <a href="#">Organization</a>

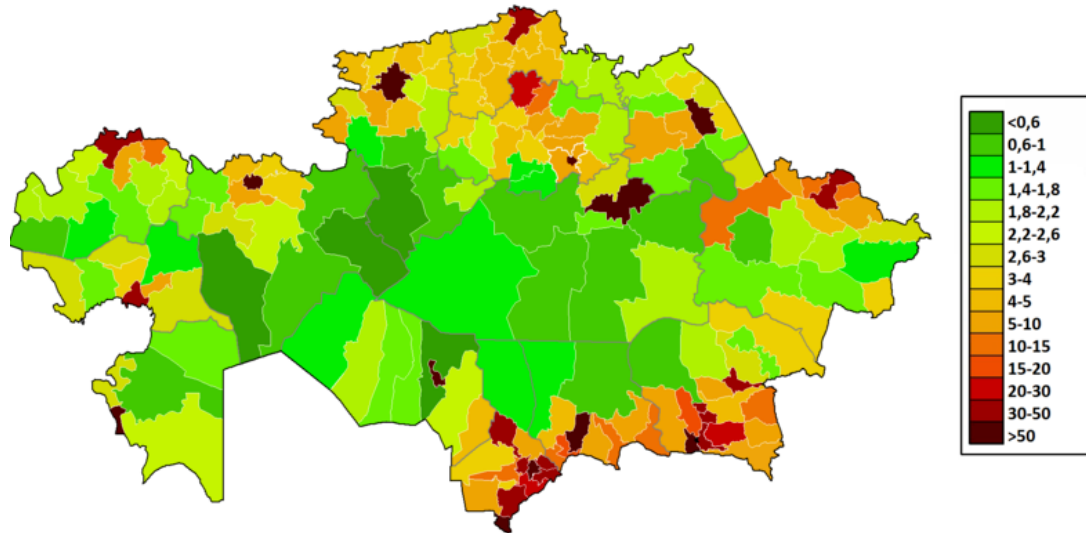
# 1. KAZAKHSTAN 2023

## 1.1. GENERAL INFORMATION ON KAZAKHSTAN

According to the latest World Bank's [Doing Business](#) Report 2020, Kazakhstan was ranked 25<sup>th</sup> out of 190 countries. Kazakhstan is 37<sup>th</sup> out of 63 countries in terms of the [World Competitiveness Ranking](#) (IMD-2022). The [WJP Rule of Law Index](#) measures Kazakhstan's rule of law performance at 65<sup>th</sup> place among 140 countries. In the [Legatum Prosperity Index](#) rankings, Kazakhstan is ranked 69<sup>th</sup> out of 167 countries. According to the [Corruption Perceptions Index](#) rankings, Kazakhstan is 101<sup>st</sup> out of 180 countries, and 97<sup>th</sup> among 163 countries based on the [Global Peace Index](#).

- **Area.** 2,724,900 sq. km; ninth-largest country in the world by territory, the size of Western Europe.
- **Borders.** 7,591 km of Kazakhstan's borders are with the Russian Federation in the north and west, 1,783 km with China in the east, 1,242 km with Kyrgyzstan, 2,351 km with Uzbekistan and 426 km with Turkmenistan in the south, the total land border length is 13,200 km. Kazakhstan is the world's largest landlocked country, its territory being washed by the enclosed inland Caspian and Aral Seas.
- **Administrative subdivisions.** 17 oblasts and 3 cities of national significance (Astana (capital since 1998, 1.3 mln people), Almaty (former capital, 2 mln people) and Shymkent (1.2 mln people)). Major cities: Astana, Almaty, Shymkent, Karaganda, Atyrau and Aktau. Among 8 regions covered by the Doing Business Report 2020, Almaty, Aktobe and Kostanay were the best cities for doing business in Kazakhstan.
- **Climate.** Continental and extreme continental, cold winters and hot summers.

- Population.** As of 1 January 2023, Kazakhstan's [population](#)<sup>1</sup> is 19.7 mln people. Kazakhstan is the 65<sup>th</sup> among the countries with the largest [population](#) and 183<sup>rd</sup> place among the countries with the largest population [density](#):



- Religion.** Kazakhstan is a secular multi-religious country. According to the 2021 population census, muslims account for 69.31% of the population and Christians – for 17.19%.
- Languages.** The main languages are Russian and Kazakh. Kazakh has the status of the state language; Russian has equal official status for all levels of administrative and institutional purposes.

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

- Currency unit.** Tenge (KZT); introduced on 15 November 1993.
- Membership.** United Nations ([UN](#)), [WTO](#), Organization of Turkic States ([OTS](#)), CIS, the Shanghai Cooperation Organization ([SCO](#)), [EAEU](#), Collective Security Treaty Organization ([CSTO](#)), Organization for Security and Cooperation in Europe ([OSCE](#)), Organization of Islamic Cooperation ([OIC](#)), and International Organization of Turkic Culture ([TURKSOY](#)).
- Political system.** Republic. The head of state is the President elected for a 7-year term by universal suffrage. The state power is divided into three branches: executive, legislative and judicial. The principal legislative power body is the [Parliament](#) constituted by the upper (Senate) and lower (Mazhilis) chambers.

<sup>1</sup> Source: Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan.

■ **Industry.** Oil and gas production, iron and steel industry and electrical energy generation cover > than 60% of Kazakhstan's industrial structure. Presence of extensive natural resources made it possible to develop national primary production and processing industry with considerable prevalence of extractive sector. Kazakhstan's subsoil is prospected to contain 99 out of 105 elements of the periodic system; the reserves of 70 elements are explored and > than 60 elements are used in production. The country's mineral raw reserves encompass > than 5,000 deposits whose forecast value is estimated at tens of trillions USD. Kazakhstan is ranked the world's first for its prospected reserves of zinc, wolfram and barite, second for silver, lead and chromites, third for copper and fluorite, fourth for molybdenum, and sixth for gold, and is ranked the world's ninth for its proven reserves of oil, eighth for coal, and second for uranium.

Kazakhstan's oil industry is one of the major economy branches of the country. The proven reserves of oil and gas condensate reach 39.8 billion barrels (≈ 5.3 billion tons). At the current rate of production and unchangeable oil and gas reserves, their production may last within 70 years. The first Kazakhstan oil was produced in November 1899 at Karashungul field in Atyrau Oblast. Kazakhstan produced 25.8 mln tons of oil in 1992 and 84.2 mln tons of oil in 2022<sup>2</sup>. Major oil companies are [Tengizchevroil](#), [Karachaganak Petroleum Operating](#), [KazMunaiGas](#), [Mangistaumunaigaz](#), [CNPC-Aktobemunaigas](#), [North Caspian Operating Company N.V. \(NCOC\)](#) and others. Major Kazakhstan's oilfields are [Tengiz](#), [Kashagan](#), [Karachaganak](#) and [Uzen](#). According to Worldometers, Kazakhstan is ranked 18<sup>th</sup> out of 127 countries in 2022 in terms of daily oil production. The traditional rating leaders are the USA, Saudi Arabia and Russia.

■ **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.

Over the recent years, Kazakhstan has been implementing a major project "New Silk Road" intended to renew the historical role of the country as a key link of the continent and transform it into a regional business and transit hub. Today there is a network of effective transit transcontinental corridors and routes from China to Central Asia and

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<sup>2</sup> Source: Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan.

Persian Gulf countries, diversification of which plays an important role in the development of the transport and logistic system of the country. To date, the Kazakhstan and Chinese sections of the Western Europe – Western China international motor road corridor (8,445 km of which 2,787 km in the Kazakhstan territory) have already been constructed and successfully function, which allowed for > than 2.5 times increase in freight traffic across Kazakhstan. Concurrently developed are the Trans-Caspian International Transport Route (TITR) and other projects, which will ensure "pass through" logistics in the nearest time. According to the state infrastructural development program "Nurly zhol" for 2020-2025, Kazakhstan continues removing infrastructural barriers.

Based on the results of the year 2020, the Kazakhstan's pipelines extend to approximately 23,445 km, of which gas pipelines are 15,424.9 km long and oil pipelines are 8,020.1 km long. Caspian Pipeline Consortium (CPC) is a major international crude oil transportation project with the participation of Kazakhstan, Russia and leading international oil and gas companies. The pipeline, which is approximately 1,500 km long, transports oil from the fields of Kazakhstan (2/3 of the Kazakhstan oil export) and Russia to the offshore terminal near Novorossiysk for export.

- **Tourism.** According to the [Travel & Tourism Development Index](#) 2021, Kazakhstan was ranked 66<sup>th</sup> out of 117 countries. Separate sub-indices show high potential of the country in the global rating. For example, Kazakhstan holds the 1<sup>st</sup> place in terms of price competitiveness. The country's territory embraces 13 national parks, 10 conservation areas, 6 nature reserves, 50 temporary reserves, 5 protected areas, and 79 natural landmarks. The key tourist territories of national level are Shuchinsk-Burabay resort zone, coast of lake Alakol, mountain cluster of the Almaty region; state national natural parks of Almaty Oblast: Charyn, Ile-Alatau, Altyn-Emel, Kolsay lakes; coast of lake Balkhash; coast of the Caspian Sea; Turkestan city; Bayanaul and Imantau-Shalkar resort areas, and other.

## 1.2. SOCIAL AND ECONOMIC DEVELOPMENT SUMMARY

Cancellation of the mask regime and other restrictions allowed the Kazakhstan's economy to start recovering after the strongest decline over the past 20 years occurring due to the COVID-19 pandemic. In 2022, the rate of the Kazakhstan's economy growth reached 5.6%. All key industries show positive dynamics with the best indices in sphere of trade (+19.4%), information and communications (+18.1%), and construction (12.5%, more than 1 mln sq. m. of residential premises were put into operation).



In the first half of 2023, Kazakhstan amended the regulation of social payments and introduced a new Social Code (1 July 2023), which led to higher budget payments for the social sphere in the total amount of KZT 1.8 bln. According to the Ministry of Finance, higher costs are associated with the annual indexation and greater number of people receiving pensions and allowances, higher salaries to education specialists, medical practitioners, non-medical employees, and civil servants, as well as the implementation of the National Project "Comfortable School".

The national development plan for 2020-2025 amended in February 2022 and the new 2021 Environmental Code are important initiatives, which will allow Kazakhstan stimulating more inclusive and green growth. Furthermore, Kazakhstan assumed an important obligation to reach carbon neutrality by 2060 as part of global efforts on the climate change control.

The [Kazakhstan 2050 Strategy](#), the purpose of which is to position Kazakhstan among the top 30 global economies, has been implemented since 2012. In 2015, Kazakhstan launched the Plan of the Nation "100 Concrete Steps to Implement 5 Institutional Reforms." For instance, one of the tasks in the sphere of issuing construction permits is to introduce a three-stage process: to issue an architectural planning assignment within 30 days; to approve the design documents within 20 days; and to issue a construction permit within 10 days. The year 2017 marked the launch of the Third Modernization of Kazakhstan, successful implementation of the Industrialization Program, adoption of a complex program "[Digital Kazakhstan](#)" and development of a comprehensive Strategic Development Plan of Kazakhstan until 2025. Kazakhstan undergoes global country modernization involving construction of new schools, vocational colleges and universities, opening of modern medical clinics and hospitals, improvement of the system for the social support of population.

In 2019, [Kassym-Jomart Tokayev](#) took office as the President of Kazakhstan, succeeding the First President Nursultan Nazarbayev.

■ **National economy.** At the end of 2021, gross domestic product (GDP) growth reached 3.2%, and industrial production growth – 1.6%. The level of **unemployment** fell to 4.9% (450,000 people). As of 1 December 2023, the number of registered **legal entities** reached 510,797.

The construction industry demonstrated stable growth in 2023 partly owing to the political measures allowing to use a part of pension savings and the state programme on support of investments in residential property.

Starting 16 December 2020, foreign banks will be allowed to open direct branches in Kazakhstan as part of the Kazakhstan's joining the WTO.

### 1.3. MAJOR EVENTS OF 2022-2023

The first quarter of 2022 marked worsening of macroeconomic conditions due to the January protests in Kazakhstan and escalation of the geopolitical tension in the region.

Volatility of the exchange rate of the national currency, accelerating inflation, depreciation of shares of local companies on the London Stock Exchange, and the echo of the anti-Russian trading sanctions introduced by the Western world temporarily reduced the business confidence of foreign investors in the Kazakhstan market and led to the risk of further delay in decision-making on market entries or business expansion.

Global prices for oil, metals and food products have considerably grown given the shift of balance on the world commodity market because of the sanctions war and breaks in supply chains.

Starting from March, ban on re-export and acceptance of cargo in transit across the Russian territory led to interruptions in the supplies of the Kazakhstan goods, accompanied by losses for local exporters (Kazakhstan's export to the EU reaches 29%).

Kazakhstan will need time to restore supplies to Europe by finding alternative routes.

Nevertheless, in the longer term the current situation opens the "window" of opportunities for Kazakhstan in certain economy sectors, specifically, on account of airspace closure for Russia, introduction of sanctions against the Russian airlines, and considerable number of trading and financial operations with the participation of Russian companies.

On 6 May, Bank CenterCredit completed the acquisition of 100% shares in SB Alfa Bank JSC in Kazakhstan, which was included in the sanctions lists. On 13 April, Kazakhstan subsidiary of "Sberbank" and the largest Kazakhstan backbone bank Halyk Bank entered into a transaction on transfer of the credit portfolio. On 2 September, National Management Holding "Baiterek" and Sberbank Group closed the sale and purchase transactions for the entire portfolio of shares of Sberbank in Kazakhstan (SB Sberbank JSC).

In March, the Kazakhstan Government started implementing the complex set of high priority anti-crisis measures, including with a view to ensure financial stability. In February 2022, Kazakhstan amended the "National Country Development Plan until 2025" subject to changes on the markets and in the global economy. NBK raised the base rate up to 14%. According to a relevant order, export of foreign currency in the amount equal to more than USD 10,000 at the exchange rate of NBK as of the date of export operation is prohibited.

The commission on demonopolization of economy under the Kazakhstan Government started working at the end of March. It is contemplated to return the facilities groundlessly privatized in the sphere of telecommunications, railway infrastructure and media assets into state ownership. Thus, 28.8% of shares in Kazakhtelecom were returned into the state ownership in April.

In addition, one of the most important events in 2022 was the National Referendum conducted with the purpose of introducing amendments into the Kazakhstan Constitution. Following the political events, which took place at the beginning of the year and served as a "trigger" to many political reforms, the Kazakhstan President Kassym-Jomart Tokayev announced the necessity to introduce certain amendments into the Constitution. Thus, on

5 June 2022, for the first time since 1995, Kazakhstan conducted the referendum regarding amendments to the Constitution.

In 2022, following the President's initiative and upon agreement with the Parliament, Kazakhstan adopted the amendments providing for limitation of the President's mandate to one term with the duration of 7 years without the right of re-election. As a result, 20 November 2022 marked the special election of the President won by Kassym-Jomart Tokayev.

#### 1.4. KAZAKHSTAN AND EAEU

The Single Economic Space (SES) was established in 2012 with a view to set up a single integrated market. The objective of the SES is to ensure the so-called "four freedoms" among the member states: movement of goods, capital, services and labor force, as well as the basics of coordination of economic policy of the member states with respect to macroeconomy and financial sector, transport and energy sector, trade, industrial and agroindustrial sectors, etc.

Starting 6 May 2017, the single market of medicines and medical products has started its operation in the EAEU member states. It is also contemplated to unify the rules of manufacture and sale of pharmaceuticals and medical products in the territories of the union states by 2025.

The concept of formation of the common financial market of the EAEU was approved on 1 October 2019. The concept determined the key purposes, objectives and directions of the formation, specifying the stages and measures on the implementation thereof, legal basis of functioning, procedure for information interaction and administrative cooperation of regulatory authorities, objectives and powers of the supranational regulatory agency of the EAEU.

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## 2. LEGAL SYSTEM AND SPECIFICS OF BUSINESS REGULATION IN KAZAKHSTAN

### 2.1. GENERAL INFORMATION ON KAZAKHSTAN'S LEGAL SYSTEM

Kazakhstan's legal system classifies as a Romano-Germanic (continental) system of law. The basic law having the highest legal force is the [Constitution](#) adopted in 1995 at a national referendum. The law currently in effect in Kazakhstan is the regulations of the Constitution, the Constitution-compliant laws and other regulatory legal acts ("RLAs"), international treaties, and regulatory resolutions of the Constitutional Council<sup>3</sup> 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 derivative acts (regulations, technical regulations, rules and instructions), which are mandatory and binding, are in effect alongside with the principal RLAs (Constitution, codes, laws, Government decrees, orders, etc.).

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

On 11 January 2022, the President Tokayev presented the new composition of the Kazakhstan Government at the extraordinary meeting of the Kazakhstan Parliament in connection with declaring the state of emergency in the country and resignation of the Government as a result of large-scale protests and subsequent events. The President concurrently gave certain instructions to the Government intended to change the social and economic policy of the state. In September 2022, the President announced specific steps on the country's political and economic transformation. In view of the above, the Government is currently reviewing the current legislation and we expect subsequent legislation amendments intended to introduce the announced changes.

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<sup>3</sup> The Constitutional Council is stipulated by the Kazakhstan Constitution of 1995. It appeared to replace the Constitutional Court of Kazakhstan and will cease to exist at the end of 2022. The Constitutional Court will be restored starting 1 January 2023 according to amendments to the Constitution adopted at the referendum in 2022.

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 RLAs often find different, sometimes mutually contradicting interpretation by different governmental agencies.

Currently, Kazakhstan 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. CIVIL CODE OF KAZAKHSTAN

The Civil Code of Kazakhstan is a codified system-forming law serving as a legal basis for the regulation of all property and personal non-property relations under free market conditions. The General Part was adopted in 1994, and the Special Part in 1999.

The Civil Code (General Part) contains such important principles as equality between the participants of civil relations, inviolability of property, freedom of contract, impermissibility of arbitrary interference with private affairs, necessity of unimpeded exercise of civil rights, ensuring of redress of violated rights, and legal protection thereof. Citizens, legal entities and, in some cases, the state act as subjects of civil relations with the condition of independence and insubordination to each other.

The Special Part of the Civil Code regulates certain types of contracts and many types of non-contractual relations, such as obligations out of harm-doing and unjust enrichment, intellectual property rights, law of inheritance, and private international law.

From the moment of adoption, the Civil Code has been many times amended (and some amendments are really important), and this process still goes on.

## 2.3. ENTREPRENEURIAL CODE OF KAZAKHSTAN

On 1 January 2016 Kazakhstan promulgated its [Entrepreneurial Code](#) of 29 October 2015 ("Entrepreneurial Code") to incorporate the regulations from several laws governing certain issues of entrepreneurship, mostly in the field of relationships between business and the state. Industry-specific types of entrepreneurship are still regulated by special laws, as before.

The Entrepreneurial 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 Entrepreneurial Code introduced some new regulations, principles and concepts in the field of entrepreneurship, in particular, the principles of social responsibility of

entrepreneurs, limited participation of the state in entrepreneurial activities, self-regulation in the field of entrepreneurship, and mutual responsibility of business entities and the state. The Entrepreneurial Code also introduced a new category of business entities and established a regime for self-regulating entrepreneur organizations and for consultative-and-advisory bodies with participation of the state and business representatives.

#### 2.4. NATIONAL CHAMBER OF ENTREPRENEURS OF KAZAKHSTAN "ATAMEKEN"

National Chamber of Entrepreneurs of Kazakhstan "Atameken" ("Atameken") is a non-for-profit self-regulated organization, which was set up to create favorable conditions to develop entrepreneurship the basis of effective partnership between business and authorities.

The objectives of Atameken embrace protection of rights and interests of entrepreneurs and ensuring of broad coverage and involvement of all entrepreneurs in the process of formation of legislative and other regulatory rules of business operation.

All for-profit legal entities registered in Kazakhstan (including banks and banking organizations, national companies and organizations being the members of national holdings in the industrial, agricultural and financial sectors), individual entrepreneurs, and peasant farmings (farming enterprises) automatically become the members of Atameken, which must pay membership fees subject to the amount of the total annual income.

Membership in Atameken does not cover branches and representative offices of foreign organizations, business entities carrying out auditing and valuation activities, state enterprises, and non-for-profit legal entities.

Membership in a certain public or business organization is a constitutional voluntary right.

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## 3. LEGAL ENTITIES

### 3.1. GENERAL PROVISIONS ON LEGAL ENTITIES

- **Types of legal entities.** In Kazakhstan, for-profit legal entities may be organized using different forms of incorporation, of which the most extensively used are limited liability partnerships (LLPs) and joint stock companies (JSCs). Non-for-profit organizations may be set up in the form of a public association, fund, union of legal entities in the form of association (union) and some other forms. Furthermore, a new legal entity may be set up and registered in the AIFC territory in the form of a private company, public company, investment company, restricted scope company, special purpose company, limited partnership, general partnership, limited liability partnership, foundation, and non-profit incorporated organization<sup>4</sup>.
- **Legislative regulation.** The key legislative acts governing the activities of legal entities are the Kazakhstan Civil Code, Kazakhstan [Law](#) on Partnerships with Limited and Additional Liability of 22 April 1998, Kazakhstan [Law](#) on Economic Partnerships of 2 May 1995 and Kazakhstan [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 State Corporation "[Government for Citizens](#)". The statutory period for registration is one business day (with certain exceptions). In fact, the registration takes a longer period and is made based on an 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 digital signature ("EDS").
- **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 Kazakhstan companies are the **charter** and **foundation agreement** (if the number of participants or founders is > 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.

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<sup>4</sup> For more information on the AIFC legal entities and their key differences, please see a separate review dedicated to the aspects of law and activities of the AIFC.

At LLPs in which the register of participants is maintained by the Central Depository, 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.** Kazakhstan companies engaging in certain types of activities, such as telecommunications, security, mass media, airline companies, etc., are subject to certain restrictions on foreign participation (individuals and legal entities).

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

### 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 Kazakhstan 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:

<b>Supreme body</b>	<b>Executive body</b>
general meeting of participants or sole participant	(sole or collective)

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

### 3.3. GENERAL PROVISIONS ON JSCS



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

A JSC may issue common shares or common ( $\geq 75\%$ ) and preferred shares ( $\leq 25\%$ ). 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  $>$  than 3 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	Management body	Executive body
general meeting of participants or sole participant	board of directors	(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 the Central Securities Depository ("KCSO")), 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;
- quite 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 the Kazakhstan 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 a branch/representative office of a foreign entity (this very exception also applies to chief executive officers of Kazakhstan legal entities and their deputies with 100% foreign participation in the charter capital);
- income after taxes in Kazakhstan may be repatriated without paying additional taxes and without complying with the currency control requirements.

Starting 1 July 2019, branches and representative offices of foreign companies are recognized as currency residents and must perform settlements with residents in tenge only.

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

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

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

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

### 3.6. ACQUISITION OF SHARES (PARTICIPATION INTERESTS) IN KAZAKHSTAN 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  $\geq 30\%$ , the acquirer must notify both the company itself and the financial market supervision authority. After having acquired  $\geq 30\%$  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 Kazakhstan Government.

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

### 3.7. LEGAL STATUS OF NON-FOR-PROFIT ORGANIZATIONS

The Civil Code of Kazakhstan defines a non-for-profit organization ("NFPO") as an organization, for which deriving of income is not the primary purpose of its activities and which does not distribute the gained net income among the participants. The Civil Code defines a for-profit organization as an organization, for which deriving of income is the primary purpose of its activities. Thus, the differences between NFPO and for-profit organizations are (1) NFPO has the purposes of activities other than deriving of income; (2) deriving of income cannot be the primary purpose of activities for NFPO; (3) prohibition to distribute net income among the participants of NFPO.

Kazakhstan legislation divides NFPO into non-public and public organizations. Non-public NFPO are those set up by citizens and non-public legal entities. They encompass all public and religious associations, property owner associations, consumer cooperative societies, bar associations, chambers of auditors, public funds, and private institutions.

Among the most popular forms of NFPO are property owner associations, public associations, public funds, and associations (unions).

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## 4. ANTITRUST REGULATION AND NATURAL MONOPOLIES

### 4.1. GENERAL PROVISIONS

The key act in the sphere of antitrust regulation of Kazakhstan is the Entrepreneurial Code. Certain relations relating to competition protection and restriction of monopolistic activities are also regulated by the Civil Code, Kazakhstan [Law](#) on Natural Monopolies dated 27 December 2018 and other subordinate RLAs, including decrees of the Kazakhstan Government and acts of the Antitrust Agency of Kazakhstan.

In addition to the above national acts, applicable are the provisions of the following international agreements for the purpose of regulation of relations involving the subjects, which exert or may exert negative influence on competition on cross-border markets: EAEU [Treaty](#) (including Annexes to the Treaty, specifically, Annex 19 ([Protocol](#) on Common Principles and Rules of Competition)) dated 2014; Agreement between the Government of Kazakhstan and the Government of the People's Republic of China on Cooperation in the Sphere of Antitrust Policy and Unfair Competition Control dated 1999; and other international agreements and treaties regulating the issues of cooperation in the sphere of competition.

### 4.2. ECONOMIC CONCENTRATION CONTROL

The **economic concentration transactions/actions**, which are subject to prior approval by the Kazakhstan antitrust 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 > 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  $\geq$  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 perform the functions of its executive body; and
- participation of one and the same individuals in the executive bodies, boards of directors, supervisory boards or other management bodies of two or more legal entities, provided that such individuals define the conditions of such market entities' business activities.

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

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

Transactions involving financial organizations fall under special conditions.

The Chapter "[Economic Competition](#)" of the Kazakhstan 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 Kazakhstan territory, or shares (participation interests) of market entities, or property or non-property rights with respect to Kazakhstan legal entities; or
- limit competition in Kazakhstan.

Economic concentration performed without the antitrust agency's consent may be invalidated by court upon a claim of the antitrust 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.

### 4.3. 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  $\geq 50\%$ . 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 Kazakhstan 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;

- 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.; and

Starting from 7 March 2022, the definition of "unfair competition" has been brought in line with the international obligations assumed by Kazakhstan. Thus, recognized as unfair competition may be any unlawful actions aimed at acquisition of advantages in entrepreneurial activities, which may cause or have caused damages to competitors, or may inflict or have inflicted harm on their business reputation. Therefore, the list of actions, which may be recognized as unfair competition, significantly expands.

#### 4.4. REGULATION OF NATURAL MONOPOLIES

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

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

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

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

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

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

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## 5. INVESTMENT

### 5.1. GENERAL PROVISIONS

The current investment regime is determined by the [Entrepreneurial Code](#).

To ensure international-legal protection of investments, Kazakhstan has ratified the following international conventions (agreements):

- [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, 18 March 1965);
- [Convention](#) Establishing the Multilateral Investment Guarantee Agency (Seoul, 11 October 1985);
- Energy Charter [Treaty](#) (Lisbon, 17 December 1994);
- Investor Rights [Convention](#) (Moscow, 28 March 1997).

Furthermore, Kazakhstan is a party to a number of multilateral agreements on support and protection of investments, which have been entered into with > than 40 countries.

The Entrepreneurial 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 legislation, 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 Entrepreneurial Code, but also the provisions of the relevant international treaties.

### 5.2. INVESTMENT LEGAL REGIME

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

## ■ Guarantees of Investor Activities Legal Protection

Investors enjoy protection of their rights and interests ensured by the Kazakhstan [Constitution](#), Civil Code, Entrepreneurial Code and other RLAs, as well as by ratified international treaties. Furthermore, there are bilateral capital investment protection treaties entered into by Kazakhstan with practically all economically developed countries and certain CIS countries.

National agency for the attraction of foreign investments, information and service support of investors in Kazakhstan is National Company "KAZAKH INVEST" JSC. To render assistance to foreign investors, there is also a number of business associations in Kazakhstan, such as European Business Association of Kazakhstan (EUROBAK), American Chamber of Commerce (AmCham), Foreign Investors' Council chaired by the Kazakhstan President, etc.

The guarantee of legal protection of the investors' activities provides for investor's right to compensation for harm caused by the issuance of subordinate legislative acts incompliant with the Kazakhstan legislation or by unlawful actions (omissions) of state officials.

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

- introduction of amendments into the Kazakhstan 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.

## ■ 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 Kazakhstan territory.

## ■ 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.

## ■ 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 Kazakhstan legislative acts in Kazakhstan courts or investment arbitration.

### 5.3. INVESTMENT PREFERENCES

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

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

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

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

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) are granted for priority investment projects.

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

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

### 5.4. ADDITIONAL STATE SUPPORT MEASURES

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

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

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## 6. SUBSOIL

### 6.1. SUBSOIL USE LEGAL REGULATION

The Kazakhstan [Code](#) on Subsoil and Subsoil Use (Subsoil Code) was adopted on 27 December 2017 and entered into force on 29 June 2018, i.e. upon expiration of six-month period of the date of its official publication, which took place on 28 December 2017. The only exception is a norm governing a particular case of introducing data into the program for the state management of the subsoil fund upon the subsoil user's application (Article 278.4.3 of the Code), which entered into force on 8 January 2018. Certain regulatory norms will be put into effect in 2020, 2021, 2022 and 2024.

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

During several years from the date of adopting the Subsoil Code, Kazakhstan has adopted new subordinate acts in furtherance of the Subsoil Code and adapted the previously adopted subordinate acts to the provisions of the Subsoil Code.

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

The most important international treaty relating to subsoil use and ratified by Kazakhstan is the Energy Charter [Treaty](#) (Lisbon, 17 December 1994). International regulation also covers environmental protection, legal status of the Caspian Sea and other issues.

### 6.2. SUBSOIL USE RIGHT

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

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

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

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

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

### 6.3. ORIGINATION OF SUBSOIL USE RIGHT

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

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

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

■ **License regime.** Licenses are issued for certain types of subsoil use operations, as follows:

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

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

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

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

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

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

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

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

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

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

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

**Uranium mining.** Uranium mining falls within special regulation. Right for uranium mining is granted only to national companies in the uranium mining sphere on the basis of direct negotiations; however, it is not prohibited to subsequently transfer the right for uranium mining to companies that are not national companies, but the participatory interest (direct or indirect) of a national company in the uranium mining sphere in the charter capital of such company must be at least 50%.

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

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

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

Transfer of subsoil use right, same as the transfer of the subsoil use right-related objects, except for certain specific cases established by the Subsoil Code, is allowed only on consent of the competent authority, which is issued for each individual case of such transfer.

**A transaction consummated without the competent authority's consent is deemed null and void.**

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

**Subsoil use right under previously concluded contracts and licenses.** Provisions of the Subsoil Code apply to relations arising after its entry into force; however, certain rules apply in respect of previously concluded subsoil use contracts (and licenses, if applicable) despite the stability norms contained in such contracts. As regards the new regulations, it is worth pointing out that there is a mandatory requirement that starting July 2021 subsoil users must conclude bank deposit pledge agreements to ensure funds for the liquidation of consequences of subsoil user's activities.

Provisions of legislation previously in effect remain in force until expiration of such contracts or introduction of relevant amendments, e.g. provisions on in-country value, confidentiality of information, including geological information, amount and reimbursement of historical costs, penalty for a failure to perform obligations on in-country value, etc.

#### 6.4. STATE'S PRE-EMPTIVE RIGHT TO ACQUIRE SUBSOIL USE RIGHTS

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

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

#### 6.5. IN-COUNTRY VALUE REQUIREMENTS

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

The in-country value obligations are *mandatory* conditions for subsoil use contracts and licenses and represent specific quantitative indicators. The minimum in-country value index must be at least 50%. The in-country value requirements do not apply to contracts for exploration and/or production of hydrocarbons under complicated projects at the blocks of subsoil completely or partially located within the Kazakhstan sector of the Caspian or Aral Sea.

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).

#### 6.6. BUSINESS ENCOURAGEMENT AGREEMENT

Starting from 1 January 2022, the concept of "business encouragement agreement" was introduced into the Subsoil Code. This concept means the agreements entered into by authorized agencies in the sphere of hydrocarbons, uranium mining and solid minerals production with National Chamber of Entrepreneurs of Kazakhstan and subsoil users on a voluntary basis and aimed at the support of local producers.

[Atameken](#) together with the authorized agencies in the sphere of hydrocarbons, uranium mining and solid minerals production exercise monitoring of the fulfillment of the business

encouragement agreement conditions and publish the outcome thereof on the Internet resources based on the data from subsoil user companies submitted by way of granting access to the systems.

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## 7. LAND REGULATION

### 7.1. STATE AND PRIVATE LAND OWNERSHIP

The key act governing land relations in Kazakhstan is the Kazakhstan [Land Code](#) adopted on 20 June 2003.

The land in Kazakhstan belongs to the people of Kazakhstan (state acts on behalf of the people of Kazakhstan). In certain cases, land plots may also be privately owned or belong to persons based on the land use (lease) right.

- **Kazakhstan non-state companies may privately own** land plots designated for agricultural 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.
- Kazakhstan citizens may privately own land plots designated for agricultural production or farming, private farm household, forestation, horticulture, individual housing construction and individual country houses construction, and land plots provided (to be provided) for development purposes, or with built-up production and non-production (including residential) buildings (constructions, structures) or building compounds, including land intended for the maintenance of buildings (constructions, structures) in accordance with their designation.

### 7.2. LAND USE RIGHT

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

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

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

- **The right of temporary free-of-charge land use** is normally granted for up to 5 years (with some exceptions). Land plots under the right of temporary free-of-charge land use cannot be alienated or transferred for secondary land use with particular exceptions.

Land plots under the right of temporary free-of-charge land use may be granted to Kazakhstan individuals and legal entities in cases provided for by legislation, including in the framework of a PPP agreement and concession.

- **The right of temporary paid land use** (lease) may be short-term (up to 5 years) or long-term (from 5 to 49 years), except for the cases of granting the right of lease for the purpose of family-operated or private farming enterprises. The right of lease is granted to individuals, non-state Kazakhstan companies and international organizations.

### 7.3. AGRICULTURAL LANDS

Until the end of 2026, there is a moratorium in Kazakhstan on the granting of the right of private ownership to agricultural lands.

Such lands may be granted for lease (under the right of land use) only to Kazakhstan citizens and Kazakhstan companies without foreign participation.

Foreigners, stateless persons, foreign legal entities, Kazakhstan companies with foreign participation, international organizations, scientific centers with international participation, and qandases cannot hold agricultural lands under the right of private ownership or land use.

For information about the land tax, please see section 11.11.

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## 8. CURRENCY REGULATION

### 8.1. PARTICIPANTS IN CURRENCY RELATIONS

The key legislative act in the currency regulation sphere of Kazakhstan is the Kazakhstan [Law](#) on Currency Regulation and Currency Control dated 2 July 2018 (the "**Currency Control Law**"). Participants in currency relations are subdivided into the **Kazakhstan residents** and **nonresidents**.

■ The **Kazakhstan residents** are:

- Kazakhstan nationals, except for the Kazakhstan nationals permanently residing in a foreign state based on the right granted under the legislation of such foreign state;
- foreigners and stateless persons holding a document allowing them to permanently reside in Kazakhstan;
- legal entities (except for international organizations) organized under the Kazakhstan legislation and located in Kazakhstan, including branches (representative offices) thereof;
- international organizations located in Kazakhstan, in case an international agreement on the establishment thereof provides for the status of a resident;
- foreign establishments of Kazakhstan;
- branches of foreign financial organizations, which may carry out banking and/or insurance activities in the Kazakhstan territory; and
- branches (representative offices) of foreign non-financial organizations (the "**BFO**") that are permanent establishments of such foreign non-financial organizations in Kazakhstan in accordance with the Tax Code, except for the BFOs recognized as nonresidents (as defined below).

■ The **Kazakhstan nonresidents** are:

- individuals who are not the Kazakhstan residents;
- legal entities and organizations that do not form a legal entity, which were organized under the laws of foreign countries and are located outside Kazakhstan, including their branches/representative offices in Kazakhstan carrying out the activities that do not entail setting up of a permanent establishment of a nonresident in accordance with the Tax Code;
- BFOs, for which the nonresident status under the Kazakhstan currency legislation is established by conditions of agreements concluded on behalf of Kazakhstan

with foreign organizations, which entered into force prior to putting the Currency Control Law into effect<sup>5</sup>;

- international organizations, unless an international agreement on organization thereof provides for otherwise;
- diplomatic and other official embassies of foreign states.

Settlements between residents may be effected only in the national currency – tenge. Branches/representative offices of foreign organizations may effect transactions with Kazakhstan residents in tenge only. However, branches/representative offices of foreign organizations may freely receive and transfer money under any currency operations with their parent nonresident companies. Operations between branches/representative offices of foreign organizations may also be effected in a foreign currency. Settlements between other residents and nonresidents may be effected in any currency.

The following requirements of the currency legislation applicable to residents do not cover branches/representative offices:

- export or import repatriation of national currency;
- record registration of currency operations involving transfer of capital;
- notification concerning opening of accounts with foreign banks; and
- provision of a permit to a foreign bank to transfer information relating to payment and/or transfer of money to the currency control authority dealing with currency operations, which may have the aim of transferring money across the border of Kazakhstan.

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

## 8.2. CURRENCY CONTROL

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

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

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<sup>5</sup> List of BFOs, for which the nonresident status under the Kazakhstan legislation is established by conditions of agreements concluded on behalf of Kazakhstan with foreign organizations, is determined by an act of the Kazakhstan Government.

Nonresidents may buy and sell foreign currency on the internal currency market without limitations (specifying, however, the purpose of the sale or purchase), and without presenting the currency contract or other documents substantiating the purpose of the sale and purchase of foreign currency. In case of purchasing foreign currency for national currency in an amount exceeding the equivalent of USD 100,000, the Kazakhstan legal entity, which is not an authorized bank or authorized organization, is to attach to the application a copy of the currency contract under which the foreign currency is being purchased and/or other documents confirming the purpose of purchase and the amount of foreign currency.

According to the Currency Control Law, transactions (operations) between the Kazakhstan residents and nonresidents on capital transfer are subject to record registration by assigning a record number to a currency contract.

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

- financial loans;
- capital subscription;
- transactions with securities, shares and derivatives;
- acquisition of the right of ownership to immovable property, except for movable things that are deemed equal or referred to immovable property by the Kazakhstan legislation;
- acquisition of exclusive rights to intellectual property items;
- transfer of money/property to perform obligations of a participant of joint activities and into trust management or trust;
- transfer of cash or financial instruments to professional participants of the SM effecting currency operations at the request of their clients for the purpose of cash accounting and custody, and
- free-of-charge transfer of cash/currency valuables.

The Kazakhstan residents entering into a currency transaction on capital transfer must apply for assignment of a record number to a currency contract to the territorial branch of NBK located at the place of location of the resident prior to commencing fulfillment of obligations under such currency contract, if the cost of the assets to be transferred under such transaction or the amount to be paid or repaid thereunder by or to Kazakhstan resident exceeds USD 500,000 (or its equivalent in any other currency). If the capital transfer transaction between a Kazakhstan resident and nonresident contains no reference to an amount of transaction, such currency transaction will be subject to registration in any way. The Kazakhstan banks are prohibited to make payments and transfers under contracts requiring a record number without obtaining such number.

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

Legal entities must obtain record numbers for their accounts opened with banks outside Kazakhstan. Such requirement also applies to branches and representative offices of the Kazakhstan legal entities. NBK assigns a record number to a bank account within five (5) business days of the moment of receiving all required documents from a Kazakhstan resident.

According to the Currency Control Law, currency operations effected by the AIFC participants in the AIFC territory do not fall under the requirements on:

- record registration of currency contracts on capital transfer;
- notification by authorized banks concerning currency operations
- notification concerning accounts opened with foreign banks.

The unified principles of the currency policy within the EAEU are determined in the [Treaty](#) on the Eurasian Economic Union.

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## 9. SECURITIES MARKET

The Kazakhstan [Law](#) on Securities Market dated 2 July 2003 ("SM Law") is the key act governing the securities market in Kazakhstan. The local SM is subdivided as follows:

Organized market	Unorganized market
Transactions with securities are executed in accordance with the trade organizer's internal documents.	Transactions with securities are executed without observing the requirements established by the trade organizer's internal documents, i.e. OTC transactions.

Starting 1 January 2020, the Kazakhstan Agency for Regulation and Development of the Financial Market ([ARDFM](#)) regulates and supervises the financial market, including the securities market and financial organizations.

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

Kazakhstan issuers may offer their securities in the territories and on stock exchanges of foreign states in a situation where at least 20% of such securities are concurrently offered on the Kazakhstan Stock Exchange ("KASE") or the Astana International Exchange ([AIX](#)).

Kazakhstan law also does not provide for any prohibition for its residents to invest in foreign securities or other financial instruments abroad of Kazakhstan. However, under the Kazakhstan Law on the Securities Market only qualified investors (individuals meeting a number of qualification requirements and recognized as the qualified professional participants of securities markets) have the right to purchase certain types of securities and financial instruments (Restricted instruments). No securities and financial instruments issued by non-Kazakhstan residents under foreign law and derivatives will be considered as Restricted instruments, if they are listed or admitted to trading on KASE or foreign stock exchange or commodity exchange.

KASE is the primary trading platform for securities in Kazakhstan, among the participants of which are the leading Kazakhstan banks, investment companies and brokers.

The AIX was formed in 2017 as one of the main structures of the AIFC which was established in 2015 under the Kazakhstan President's [Edict](#) No. 24 "On the Astana International Financial Centre" dated 19 May 2015. The AIX should become the most technologically advanced exchange in the region. The AIX's shareholders include AIFC, Shanghai Stock Exchange, the Silk Road Fund and NASDAQ, which also provides AIX's trading platform. The AIX rules and regulations are placed on its website ([www.aix.kz](http://www.aix.kz)).

The AIX has launched in November 2018, when the IPO of Kazatomprom, a national company, took place. The first trading on the AIX took place on 14 November 2018. Shares and GDRs of NAC Kazatomprom JSC, euronotes of the Kazakhstan Ministry of Finance, bonds of Kazakhstan Temir Zholy JSC, shares of Polymetal, and other securities are currently listed on the AIX. To date, the AIX's official [list](#) covers the securities of 85 different issuers. The trading exchange members are 30 companies represented by both Kazakhstan and international legal entities.

Separate regulations are established with respect to **Islamic securities**. The key principles of Islamic finance are as follows:

- issuer may not accrue interest as a percentage of the Islamic securities value and guarantee income on Islamic securities;
- 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 by money. Until an offered Islamic security is paid in full, the issuer may not issue an order to charge it to the acquirer's personal account.

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## 10. PERMITS AND NOTIFICATIONS

In order to conduct certain types of activities or operations defined by the Kazakhstan [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.

### 10.1. CATEGORIES, CLASSES AND TYPES OF PERMITS

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

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

Special types of licenses apply to export and import:

General license	Exclusive license	One-time license
A license granting the right to a foreign trade participant to export and/or import a certain type of licensable goods within certain quantities determined in the license.	A license granting a foreign trade participant an exclusive right to export or import a certain type of goods.	A license issued to a foreign trade participant based on a foreign trade transaction, the subject of which is the licensable goods, and entitling to export or import such goods within certain quantities.

### 10.2. 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 equal terms to both Kazakhstan residents and foreign citizens, stateless persons and foreign companies, which meet relevant requirements. Certain types of activities may be performed only by Kazakhstan residents.

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

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

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

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

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## 11. TAXES, CHARGES AND OTHER MANDATORY PAYMENTS

### 11.1. GENERAL PROVISIONS

Starting 1 January 2018, the key taxation provisions are governed by the new Kazakhstan [Code](#) "On Taxes and Other Mandatory Payments to the Budget" ("Tax Code") dated 25 December 2017, which provides for the types of taxes and charges applicable depending on the presence of the taxable items and, in certain cases, on the type of performed activities.

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

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

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

### 11.2. LIMITATION PERIOD

In 2020, the limitation period for a tax obligation and claim was reduced from 5 to 3 years. However, the limitation period for the large-scope business entities and taxpayers carrying out their activities according to a subsoil use contract and for the issues of taxation of controlled foreign companies is five (5) years.

### 11.3. RESIDENT AND NONRESIDENT TAXATION

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

Recognized as nonresident's **permanent establishment** is a permanent place of activities through which the nonresident performs, in full or in part, its business activities, including activities performed via an agent, for example: place of activities associated with the production, supply or sale of goods; place of activities associated with operation of game

machines, computer networks and communication channels; place of management, department, bureau, office, room, agency, factory, studio, workshop, laboratory, shop, warehouse, etc.

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

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

Recognized as the Kazakhstan 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 staying in Kazakhstan for at least 183 calendar days over any consecutive 12-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:

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

#### 11.4. CORPORATE INCOME TAX (CIT)

The CIT payers include Kazakhstan legal entities and foreign companies performing activities in Kazakhstan via a permanent establishment or receiving income through sources in Kazakhstan. 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;
- taxable income of controlled foreign companies and permanent establishments controlled by a controlled foreign company;

- net income of the foreign company operating in Kazakhstan via a permanent establishment.

In addition to CIT, the net income of foreign company operating in Kazakhstan 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 Kazakhstan sources is taxable at the rates from 5% to 20%.

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

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

### 11.5. 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.

Starting 1 January 2023, income is IIT-taxable at the unified rate of 10%. The 5% rate for income in the form of dividends was excluded. The tax on income taxable at the source of payment is to be calculated, withheld and paid by tax agents.

### 11.6. VALUE ADDED TAX (VAT)

The VAT payers are

- Kazakhstan companies and nonresidents performing activities in Kazakhstan via branches/representative offices, which have been VAT-registered;
- persons importing goods into the Kazakhstan territory;
- foreign companies whose Internet platforms are used for electronic trade or which provide services in the electronic form.

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

**The minimum turnover** is 20,000 MCI as established by the National Budget Law and in effect as of 1 January of a relevant financial year.

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

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

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

### 11.7. EXCISE TAX

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

- all kinds of ethyl alcohol;
- alcohol products;
- tobacco products, products with heated tobacco, and nicotine-containing liquids for use in electronic cigarettes;
- gasoline (except for aviation gasoline), diesel fuel, gasohol, benzanol, petroleum solvent, light hydrocarbons mixture, ecological 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.

### 11.8. EXPORT RENT TAX

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

### 11.9. SUBSOIL USER TAXES AND SPECIAL CHARGES

Chapters 82-88 of Section 23 of the Tax Code are dedicated to taxation of subsoil users.

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

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

■ **Subsoil User's Special Charges are as follows:**

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

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

- **Historical costs charge** – a fixed subsoil user's payment to compensate for the aggregate costs incurred by the state for the geological study of the contract area and deposit exploration prior to entering into the subsoil use contract. Starting 1 January 2018, the subsoil users who obtained licenses after 31 December 2017 are exempted from the payment of historical costs charges in accordance with the Kazakhstan [Code](#) No. 125-VI "On Subsoil and Subsoil Use" dated 27 December 2017. The amount of historical costs is calculated by the authorized state agency.

- **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 Kazakhstan 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 a resolution of the Kazakhstan Government.

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

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

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

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

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

- **Royalty/Kazakhstan's share of production.** Production-sharing agreements (contracts) and subsoil use contracts approved by the President of Kazakhstan may provide for a payment for the right to use subsoil in the form of royalty or the Kazakhstan's share of production. The Kazakhstan's share of production is determined as the total cost of profit production to be divided between Kazakhstan and a subsoil user, less the subsoil user's share in the profit production.

### 11.10. SOCIAL TAX

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

### 11.11. 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.

Legal regulation of the land tax is secured in Chapters 60-63 of Section 14 of the Tax Code.

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.

#### ■ **Single Tax**

Starting 1 January 2020, Kazakhstan introduced a special tax regime (STR) for farm households or enterprises, which provides for a special procedure for budget settlements on the basis of payment of the single tax and covers the activities of farm households and



enterprises involving the production and sale of agricultural goods, processing of own agricultural goods, and sale of derived products.

The taxable item for a taxpayer applying STR for farm households or enterprises on the basis of payment of the single tax is the income derived (to be derived) in and outside the Kazakhstan territory over a taxable period (income is determined the same way as in a simplified declaration: all profits without expenses for a year). The single tax rate is 0.5% of the taxable item.

Payers of the single tax do not pay other taxes and payments to the budget, including IIT, land tax, vehicle tax, property tax, social tax and charges for negative environmental impact – according to activities of a farm household or enterprise covered by such STR.

### 11.12. 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 Kazakhstan 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.

### 11.13. PROPERTY TAX

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

The tax payers are:

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

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

#### ■ Individual Property Tax

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

### 11.14. GAMBLING BUSINESS TAX

This tax applies to casinos, gambling machines, sweepstakes and bookmaker services. The tax rates are MCI-based, depending on taxable items.

In case of carrying out activities in the gambling business sphere, the items subject to the gambling business tax are:

- gambling table;
- gambling machine;
- sweepstake counter;
- bookmaking office counter;
- electronic counter of a bookmaking office.

### 11.15. OTHER DEDUCTIONS/CONTRIBUTIONS

Besides IIT withheld by an employer (tax agent) from the employee's income, payable are social deductions to the State Social Insurance Fund ("SSIF"), pension contributions to the State Accumulative Pension Fund ("SAPF") and deductions to the Social Medical Insurance Fund ("SMIF").

#### ■ Social deductions

According to the Kazakhstan [Law](#) "On Mandatory Social Insurance" dated 26 December 2019, the item subject to social deductions for employees and persons who have other remunerable work (elected, appointed or approved) is the employer's expenses paid by the employer in the form of income as remuneration, except for the income that is not subject to social deductions payable to the fund.

The social contribution rate for the participants of the mandatory social insurance system is  $\geq$  than 3.5% of 1 MS and  $\leq$  than 3.5% of 7 MS.

#### ■ Mandatory pension contributions (MPC)

The MPC amount is 10% of monthly income ( $\leq$  than 50 MS). The maximum total annual income must not exceed 12 x 50 MS.

#### ■ Mandatory occupational pension contributions (MOPC)

MOPC are made by agents at their own expense in favor of employees involved in work with harmful labor conditions, whose professions are stipulated by the list of productions, work and professions of employees approved by the Kazakhstan Government.

The MOPC amount is 5% of the employee's monthly income taken to calculate pension contributions.

### ■ **Mandatory social medical insurance (MSMI)**

Mandatory social medical insurance is in effect since the beginning of 2020. According to the established rates of deductions, employers pay 3% of the employee's salary amount ( $\leq$  than 10 MS); employees, including the persons receiving income under civil contracts – 2% of their income; individual entrepreneurs, farm households and privately practicing persons – 5% of 1.4 MS; and direct payers – 5% of 1 MS.

### ■ **Single overall payment (SOP)**

Starting 2019, Kazakhstan introduced the SOP which provides for a simplified procedure for registration with the tax authority of persons unofficially carrying out business activities who do not use labor of wage workers and provide their services only to individuals who are not the tax agents.

The SOP unites four types of mandatory payments: IIT, social contributions to SSIF, pension contributions to SAPF and deductions to SMIF.

The monthly SOP rate in 2023 is:

- 1 MCI for individuals residing in the cities of national significance, capital and cities of regional significance;
- 0.5 MCI for individuals residing in other localities.

The SOP payer's income must not exceed 1,175 MCI per a year.

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## 12. CUSTOMS REGULATION

### 12.1. GENERAL PROVISIONS

On 1 January 2018, Kazakhstan put into effect the Code "On Customs Regulation in the Republic of Kazakhstan" ("Customs Code"). The key purpose of adopting the new Customs Code was to harmonize and uniform the Kazakhstan customs legislation with the customs legislation of the EAEU, since 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 EAEU [Customs Code](#), Annex 1 to the Treaty on the EAEU Customs Code of 11 April 2017 and the EAEU Unified Commodity Nomenclature of Foreign Economic Activities/[Unified Customs Tariff \(approved by the Resolution No. 80 of the Eurasian Economic Commission Council of 14 September 2021\)](#) are in effect. Accordingly, the key aspects of the unified customs regulation in Kazakhstan are stipulated by the [Treaty](#) on the EAEU and the Customs Code of the EAEU, which served as a basis for the Customs Code.

### 12.2. CUSTOMS CHARGES

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

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

The import subject to VAT includes the customs value of imported goods, subject to the transfer pricing legislation, and the amounts of taxes and customs duties, special

antidumping and compensatory charges payable to the budget when importing goods to Kazakhstan, except for import VAT;

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

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

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

In June 2023, Kazakhstan launched an experiment in the sphere of foreign electronic trade in goods ("Customs Experiment"). The Customs Experiment will last until 31 December 2024. No fees for the customs clearance will be charged, and customs taxes and duties will be paid in the form of an overall payment based on unified rates. The cost of imported goods for electronic trade must be specified in a goods declaration for express cargo based on the information on their bottom-line price specified in a document on acquisition of such goods (receipts, invoices, banking payment documents), and in case customs operations are performed by the electronic trading operators – also based on the information (if any) on acquisition of such goods received by the electronic trading operators from the electronic trading platforms.

### 12.3. CUSTOMS PROCEDURES

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

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

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

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

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

The goods temporary importation (admission) procedure implies a full or partial exemption from import customs duties and taxes. The list of goods falling under full exemption is determined by the Kazakhstan international agreements and/or by the EEC due to the Kazakhstan's membership with the EAEU.

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.

Goods for electronic trade imported by individuals are released by the customs authority as part of the Customs Experiment under the simplified procedure without placing under the customs procedures.

#### 12.4. CUSTOMS DECLARATION

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

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

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

As part of the Customs Experiment, customs operations with respect to goods for electronic trade are performed personally by individuals who are the recipients of such goods or by the electronic trading operators on behalf of the customs declarants (individuals).

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### 13. PUBLIC-PRIVATE PARTNERSHIP (PPP)

Public-private partnership ("PPP") is governed by the Kazakhstan Law "On Public-Private Partnership" dated 31 October 2015. Concession projects being a variation of PPP are governed by a special Kazakhstan [Law](#) "On Concessions" dated 7 July 2006. General PPP provisions are also included in the Kazakhstan [Entrepreneurial Code](#).

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

According to the implementation methods, PPP projects may be divided into institutional and contract projects. An institutional project contemplates setting up of a legal entity by a private partner and the public partner.

Contract PPP is implemented by way of:

- concession;
- trust management of state-owned property;
- property lease of state-owned property;
- leasing;
- contracts entered into for the development of technologies, pilot production, experimental-industrial trials and small-scale production;
- life cycle contract;
- service contract; and
- other contracts meeting the features of PPP.

Sources for reimbursement of expenses and deriving of income by the PPP subjects are as follows:

- sale of goods, work and services in the course of performance of a PPP agreement;
- state subsidies in established cases;
- compensation of investment costs;
- compensation of operating costs;
- consideration for the management of a PPP facility owned by the state and lease payment for using a PPP facility; and
- availability payment.

The list of PPP projects contemplated for implementation is formed by the central authorized agency for state planning or by local executive agencies and must be placed on a website

of a special public-private partnership development center (currently, Kazakhstan Public-Private Partnership Center JSC).

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

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

PPP projects are implemented in all economy branches (spheres). Facilities included in a special [list](#) determined by the Kazakhstan Government cannot be transferred for the purposes of PPP project implementation. The term of implementing a PPP project may vary from three (3) to thirteen (13) years, depending on the project specifics.

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

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

A private partner may be determined applying a simplified tender only for local PPP projects with the value of no more than 4 mln MCI (approximately USD 26 mln). A private partner is determined and PPP agreement is concluded under informatization service model in accordance with the Kazakhstan legislation on informatization.

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

- to be legally capable (for legal entities) and be able to act (for individual entrepreneurs);
- to be capable of paying and have no tax debts > 6 MCI;
- to have financial and/or material and/or labor resources required to perform obligations under PPP agreement;
- not to be subject to bankruptcy or liquidation procedure; its property, the book value of which exceeds 10% of the value of respective fixed assets, must not be attached, and its financial and economic activities must not be suspended in accordance with the Kazakhstan legislation;
- not to be held liable for a failure to perform and/or improper performance of obligations under PPP agreements concluded within the past three (3) years based on a court judgment, which entered into legal force, on recognition as a bad faith potential private partner;



- founders and chief executives of a potential private partner must not be included in the list of organizations and persons connected with financing of terrorism and extremism;
- not to be included in the register of bad faith participants of public procurement; and
- to have own or own and borrowed funds in the amount  $\geq 20\%$  of the value of a PPP facility.

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

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

With respect to concession projects of special significance, parties to a concession agreement may select foreign arbitration to resolve disputes under the agreement, provided that at least one of the shareholders (participants) of a concessionaire is a Kazakhstan nonresident. Please note that foreign arbitration may be possible for PPP agreements if (1) private partner itself or one of its participants holding  $\geq 25\%$  participation interest or shares is a nonresident, and (2) value of a PPP project exceeds the threshold of 4 mln MCI (approximately USD 26 mln).

Legislation in the PPP sphere provides for a special regime for an account intended for crediting the investment costs compensation. This account must be opened by a private partner in case of borrowings on the pledge of the right of claim for cash receipts in the form of the investment costs compensation.

The special regime of this account is that it can be used only to credit the investment costs compensation, and only creditors may initiate recovery proceedings with respect to money on this account.

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## 14. SPECIAL ECONOMIC AND INDUSTRIAL ZONES

To date, Kazakhstan has 13 **special economic zones ("SEZ")** and 33 **industrial zones ("IZ")**.

### 14.1. SEZ

Understood as SEZ is a part of Kazakhstan territory with accurate boundaries and a special legal regime providing for the benefits for carrying out the priority types of activities, the list of which is determined by an authorized governmental agency exercising state regulation of activities of SEZ. Relevant benefits are stipulated by the tax, customs, land, and population employment legislation and the Kazakhstan Law "On Special Economic and Industrial Zones" dated 3 April 2019 ("SEZ and IZ Law").

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

SEZ may be set up for a term of up to twenty-five (25) years, which may be extended if so decided by the Kazakhstan Government.

According to the Tax Code, when assessing the land tax, property tax and land user charge payable to the budget with respect to taxable items located in the SEZ territory, for organizations or individual entrepreneurs carrying out the priority types of activities in the SEZ territory, its amount is reduced by 100%. The said reduction is a preference on taxes and charges.

Organizations carrying out activities in the SEZ territory enjoy 100% reduction of CIT with respect to income received from the sale of goods, work and services resulting from the priority types of activities.

SEZ territory is a part of the customs territory of the EAEU with the customs procedure of a free customs zone in effect in accordance with the customs legislation of the EAEU and/or Kazakhstan. 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 the product safety requirements. No customs clearance of goods moved within the customs territories of the EAEU countries is required.

## 14.2. IZ

Understood as IZ is a territory equipped with engineering and communications infrastructure provided to private entrepreneurship entities for the placement and operation of objects of entrepreneurial activities, including in the sphere of industry, agroindustrial complex, tourist industry, transportation logistics and waste management. IZ are set up in the Kazakhstan territory to ensure infrastructural facilities for the development of entrepreneurial activities in regions.

Depending on the subject that creates IZ and the source of financing, IZ may be divided into state and private. In turn, the state IZ may be divided into IZ of national significance, IZ of regional significance and small-scale IZ.

IZ of national and regional significance may be created for at least twenty (20) years. When providing state and other services in the IZ territory, one stop principle is applied, which allows for timely provision of services, including provision of information assistance with respect to such services.

A resolution to create a state IZ is adopted by a local executive authority, while a private IZ requires mandatory approval by such authority. A variety of a private IZ created by individuals and/or non-state legal entities is a special IZ, in the territory of which it is allowed to directly apply international construction norms and rules, including standards of foreign countries.

The single coordination center for SEZ and IZ is Kazakhstan Industry and Export Center "QazIndustry" JSC. The objectives of the single coordination center are to develop, promote and improve investment attractiveness of SEZ and IZ.

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## 15. LABOR RELATIONS AND FOREIGN LABOR ENGAGEMENT

### 15.1. LEGAL REGULATION OF LABOR RELATIONS

Labor relations are regulated in Kazakhstan by the [Labor Code](#) adopted on 23 November 2015, Social [Code](#) of Kazakhstan dated 20 April 2023, Law "[On Population Migration](#)" dated 22 July 2011, Law "[On Trade Unions](#)" dated 27 June 2014, Law "[On Minimum Social Standards and Their Guarantees](#)" dated 19 May 2015, and by other laws and subordinate acts.

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

### 15.2. EMPLOYMENT CONTRACT

Labor relations between the employee and employer are to be formalized on a mandatory basis by a written **employment contract**. An employment contract may be concluded in the form of an electronic document using EDS.

An employment contract may be concluded for a certain term or on a termless basis.

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

### 15.3. PRINCIPAL LABOR CONDITIONS

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

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

- normal work time duration cannot exceed 40 hours per week;
- minimum duration of the principal paid annual labor leave is 24 calendar days;
- maximum allowable duration of overtime work is 2 hours per day, 12 hours per month and 120 hours per year, overtime payable at no less than 1.5 rate or with provision of rest hours, at least 1 hour per 1 hour of overtime work;
- work on days off and holidays is performed in accordance with a special procedure with at least 1.5 remuneration;

- salary is set and is paid monthly in tenge; and
- employer is responsible for ensuring employees' labor safety conditions.

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

Work on rotation, remote work, work with hazardous labor conditions, work of women, other persons with family obligations, foreign employees of governmental agencies, foreign employees arriving to Kazakhstan under intra-corporate transfer, employees of individual entrepreneurs and/or companies carrying out their activities using the Internet platforms and/or platform employment mobile applications, and work of some other categories of employees are subject to special requirements to labor conditions.

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

It is worth additionally mentioning that, starting 1 May 2023, to enter into an employment contract a foreign employee must have a temporary medical insurance contract covering primary medical care and inpatient specialized medical care in urgent situations under conditions established by the Kazakhstan laws. In case of absence of such insurance contract, it is not allowed to enter into an employment contract with a foreign employee.

#### 15.4. UNIFIED ACCOUNTING SYSTEM OF EMPLOYMENT CONTRACTS ("UASEC")

For the purpose of automated accounting of employment contracts, labor activities and number of employees Kazakhstan created UASEC. Starting from September 2020, employers must introduce the following data into UASEC on the labor exchange website : parties' details, labor function (position, specialty, profession, qualification), place of work performance, employment contract term, work commencement date, date of employment contract and its sequence number, work time and rest time regimes, including any changes in such data, as well as information about the employee's maternity leave (leave in connection with adoption of a newborn child) and unpaid childcare leave until the child reaches the age of 3, and termination of an employment contract.

Information introduced into UASEC relates to employment contracts entered into before 18 September 2020, which remain in effect in an employing company at present, as well as the employment contracts entered into after 18 September 2020. Information on the previously concluded employment contracts had to be introduced until 18 September 2021 by the employers who have < than 2,000 employees; in case the staff number > 2,000 employees, this term is extended until 18 September 2022. Information about employment contracts entered into after 18 September 2020 must be introduced into UASEC within 5 business days, on changes in an employment contract – within 15 calendar days, on cancellation of an employment contract – within 3 business days.

## 15.5. USE OF FOREIGN CITIZENS' LABOR IN KAZAKHSTAN

### ■ Foreign Labor Engagement Permit

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

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

Starting from spring 2020, permits are issued to employers for foreign labor engagement (including the permits issued in the framework of intra-corporate transfer) only in the electronic form via the Kazakhstan e-Government portal ([www.elicense.kz](http://www.elicense.kz)). Therefore, in order to interact with the portal for these purposes employers need to register electronic digital signatures. Transition to the electronic form of interaction, among other things, allows service recipients to keep track of the whole process and the current status of provision of the state service online.

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

Category	Employees
I	CEOs and their deputies
II	heads of structural subdivisions who meet the established qualification requirements and qualification standards
III	specialists who meet the established qualification requirements and qualification standards
IV	qualified workers who meet the established qualification requirements and qualification standards

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

### ■ Foreigners Carrying Out Activities without Special Permits

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

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

### ■ Conditions for Issuing Foreign Labor Engagement Permits

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 Kazakhstan Government on an annual basis as a percentage of labor force, and includes as follows:

- foreign labor engagement quota by the type of economic activities;
- foreign labor engagement quota by the country of origin<sup>6</sup>, provided there exist international treaties on cooperation in the field of labor migration and social protection of migrant workers ratified by Kazakhstan; and
- labor immigrant engagement quota<sup>7</sup>.

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

- Kazakhstan citizens must be  $\geq 70\%$  of the staff-list number of the first and second category employees;
- Kazakhstan citizens must be  $\geq 90\%$  of the staff-list number of the third and fourth category employees.

When issuing permits, employers encounter a requirement on replacement of foreign employees of the fourth category by local employees within a period from 6 to 12 months of the moment of issuing a relevant permit. Failure to fulfil this requirement, same as establishment of the fact by the authorized agency that an employer engaged a foreign employee with a profession or specialty, which does not correspond to the profession or

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<sup>6</sup> The country of origin means the country whose citizen is the foreigner performing labor activities in Kazakhstan.

<sup>7</sup> Labor immigrants are immigrants arriving to Kazakhstan as domestic workers to perform work (provide services) within the household of an individual employer based on a respective permit. Such individual employer cannot enter into employment contracts for household work (services) with more than 5 labor immigrants at a time.

specialty specified in the permit, entails rejection of issuing of new permits to the employer. In the latter case, the authorized agency also revokes the previously issued permits which are currently in effect.

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

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

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

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

#### ■ **Conditions for issuing 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 Kazakhstan 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 covering primary medical care and inpatient care, and make an advance payment of individual income tax for the period specified in the permit application.

Labor immigrant permits are issued for the period specified in the permit application, which may be 1, 2 or 3 months. The maximum period of labor immigrant's continuous temporary residence in Kazakhstan cannot exceed 12 months. A new permit may be issued to the labor immigrant not earlier than 30 days after the previous permit expires.

One individual employer cannot enter into employment contracts for household work (services) with more than 5 labor immigrants at a time.

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

### 16.1. VISA REGIME

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

Visas are issued abroad by Kazakhstan foreign establishments. In the territory of Kazakhstan, visas may be issued by the Consular Service Department of the Kazakhstan Ministry of Foreign Affairs or by Migration Police Administrations of the Kazakhstan Ministry of Internal Affairs. In case a properly executed invitation by a Kazakhstan party is in place, visa may be issued at the local airports. Starting from 2020, it is possible to obtain single-entry electronic tourist and business visas and medical treatment visas via the visa-and-migration portal of the Kazakhstan e-Government for the citizens of 109 countries (Egypt, Iran, Cuba, Lebanon, Turkmenistan, Montenegro, etc.).

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

Visas	Issued to
<b>Investor visas</b>	CEOs and managers of foreign companies participating in investments in Kazakhstan's economy, and their family members
<b>Business travel visas</b>	foreign citizens traveling to, or staying in, Kazakhstan for business purposes and to founders or members of the board of directors; for participation in business negotiations; conclusion of contracts; installation, repair and maintenance of equipment, participation in youth, student or school exchange programs; lecturing or teaching at educational institutions; provision of consulting or audit services; conveying of humanitarian aid; participation in conferences, symposia, forums, exhibitions and concerts, cultural, scientific, sports and other events; and participation in meetings, organizations, round tables, and experts meetings
<b>Labor activities visas</b>	foreign citizens traveling to Kazakhstan in order to work, if they have a work permit (visas issued both to foreign employees and their family members coming with them) or an independent job placement certificate; or to perform entrepreneurial activities (visas issued to business immigrants)

A simplified procedure for obtaining Kazakhstan visas is envisaged for certain categories of individuals, including citizens of more than 40 developed countries (USA, Canada, United

Kingdom, Japan, Israel, Denmark, Australia, Bulgaria, Norway, Poland, Singapore, Spain, France, Germany, South Korea, and other) who can receive short term Kazakhstan visas without invitation (visa support).

Moreover, the citizens of more than 50 countries that demonstrated the highest investment activity in Kazakhstan (among these are USA, Belgium, United Kingdom, Germany, Israel, Spain, Cyprus, UAE, Singapore, Turkey, France, South Korea, etc.) are allowed visa-free entry into Kazakhstan, if their term of stay does not exceed 30 days within one visit and 90 days in total within 6 consecutive months. A longer stay requires issuance of a single-entry "business" visa with a term of up to 30 days. On 18 May 2023, Kazakhstan and China entered into the Mutual Exemption from Visa Requirements, whereby after ratification and entry into force of the international agreement, citizens of China will be able to stay in Kazakhstan without visa on similar conditions for up to 30 days within one visit and up to 90 days in total within 6 consecutive months.

Starting from 7 July 2022, citizens of Iran, China and India may enter Kazakhstan on a visa-free basis for a term of up to 14 days within one visit and 42 days in total within 6 consecutive months.

The above benefits covering visa-free entry relate to business, personal and tourist trips. No labor or other remunerable activities are allowed in Kazakhstan under the visa-free regime. For this purpose, the host party must execute a relevant work permit and a Kazakhstan work visa in advance for a foreign employee.

## 16.2. TERM OF STAY OF FOREIGN CITIZENS IN KAZAKHSTAN

Foreign citizens temporarily staying in Kazakhstan must leave the country until visa expiration. The term of temporary stay in Kazakhstan of foreign citizens who arrived on a visa-free basis cannot exceed 30 days of the date of crossing the state border of Kazakhstan (total duration of stay within each period of 180 calendar days must not exceed 90 calendar days). The permitted period of stay for the citizens of Iran, China and India ends upon expiration of 14 days, and for the citizens of the Union member states – 90 days (total duration of stay within each period of 180 calendar days must not exceed 90 calendar days).

For the foreigners arriving in Kazakhstan, the 180-day period is calculated from the date of crossing the state border for the first time (for a relevant period). In case the excess of the permitted period of stay is established at the entry, no entry will be permitted. For the foreigners already staying in Kazakhstan, the permitted period of stay will be verified (calculated) by counting 180 calendar days backwards from the date of control (date for which it is required to establish lawfulness of stay). The permitted period of stay is verified at the foreigner's exit from Kazakhstan by counting 180 calendar days backwards from the date of actual exit.

International treaties may provide for another procedure (e.g. pursuant to the EAEU Treaty, the period of temporary stay of foreign workers who are citizens of the Union member states

is determined by the term of an employment or a civil contract; according to an agreement with the Kyrgyz Republic, the term of stay in the Kazakhstan territory may be 90 days with a possibility to extend for the same term).

Immigrants who have been issued a temporary residence permit must leave Kazakhstan before expiration of its term.

In exceptional cases (in the event of social, natural, man-made emergency situations or announcement of the state of emergency in connection with a justifiable threat of a natural calamity or a large-scale accident (disaster) and interruption of the transport operating schedule), the term of stay is extended for a period required to organize the departure, but for no more than 30 calendar days.

When crossing the state border, foreigners arriving with a Kazakhstan visa are automatically counted via the [visa-and-migration portal](#) of the "Berkut" Unified Information System at the address specified by the host party when executing an invitation. The host party (hotels, hostels, owners of apartments rented by foreigners, medical and preventive treatment facilities, educational organizations, employers and other legal entities and individuals) must notify the internal affairs authority about the nonresidents staying with them within 3 business days of the date of arrival. The notification procedure is automated and implemented via the "Berkut" UIS. For this purpose, it is necessary to do the following on the said website:

- to fill out information on a foreigner and his / her children, if necessary;
- to sign the filled out application form using EDS; and
- 15 minutes later, to obtain the prepared document which will be stored on the personal account.

An alternative method of notifying about the staying nonresidents may be the submission of a notice when directly applying to a subdivision of the migration service or sending of a notice by post.

In the event the inviting party fails to perform the obligations to timely inform about the immigrants staying with the inviting party, take measures to execute the documents giving the right to stay in Kazakhstan and ensure their exit from the country upon expiration of the established term of stay, the Kazakhstan legislation provides for administrative liability. The fact of bringing the inviting party to administrative liability twice or more within 12 consecutive calendar months serves as a ground for the authorized agencies to reject consideration of invitations of foreigners to the Republic of Kazakhstan.

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## 17. PERSONAL DATA AND PROTECTION THEREOF

### 17.1. GENERAL PROVISIONS

The issues of legal regulation of personal data and their protection in Kazakhstan are governed by the Kazakhstan [Law](#) "On Personal Data and Protection Thereof" dated 21 May 2013, Kazakhstan [Law](#) "On Informatization" dated 24 November 2015 and other RLAs. The key purport of legislation in this area is to ensure protection of human and civil rights and freedoms in the course of personal data collection and processing.

Personal data may be transferred to the territories of foreign states, provided only that such states ensure protection of personal data, for example, according to the Convention for 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 of presence of a written consent of a subject or his/her legal representative. Specifics of cross-border transfer of service information on subscribers and/or service users are determined by the Kazakhstan Law "On Communications" dated 5 July 2004.

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

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

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

Personal data are to be collected and processed, including with the use of information systems, on consent of the subject or his/her legitimate representative (in writing, in the form of an electronic document, by way of service of ensuring safety of personal data or by any other methods applying the elements of protective actions (electronic digital signature) that do not contradict the Kazakhstan legislation), except for certain cases, which mostly relate to public interests protection.

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

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

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

## 17.2. PERSONAL DATA PROTECTION

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

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

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

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

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

The prosecution agencies carry out supreme supervision over legality in the area of personal data and protection thereof. The governmental agency authorized to exercise control over compliance with legislation in a respective part is the Ministry of Digital Development, Innovations and Aerospace Industry of Kazakhstan.

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## 18. INTELLECTUAL PROPERTY AND COPYRIGHT

### 18.1. GENERAL PROVISIONS

#### ■ Legal Regulation of Intellectual Property

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

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

#### ■ Intellectual Property Items. The protected **intellectual property items** are as follows:

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

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

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

### 18.2. LEGAL PROTECTION OF TRADEMARKS

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

A court may annul the trademark registration upon a claim from the party concerned in the event such trademark has not been used without a valid reason for 3 years preceding the date of the claim.

While being a member of the Eurasian Economic Union, Kazakhstan applies the regional principle of trademark rights exhaustion in relation to the member states of the Union. The

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

### 18.3. RIGHT TO UNDISCLOSED INFORMATION PROTECTION

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

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

### 18.4. RIGHTS TO INVENTION, UTILITY MODEL OR INDUSTRIAL DESIGN

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

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

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

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

## 18.5. COPYRIGHT AND NEIGHBORING RIGHTS

Copyright and neighboring rights are regulated in Kazakhstan by the Law "On Copyright and Neighboring Rights" dated 10 June 1996.

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.

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

### 19.1. JUDICIAL SYSTEM OF KAZAKHSTAN

#### ■ General Provisions

The key legislative acts governing Kazakhstan's judicial system are the [Constitution](#) of Kazakhstan and the Constitutional [Law](#) "On Judicial System and Status of Judges in the Republic of Kazakhstan" dated 25 December 2000. The [Civil Procedure Code](#) of Kazakhstan dated 31 October 2015 establishes the procedure in civil cases. Judicial proceedings in connection with disputes with governmental agencies (internal administrative procedures of governmental agencies, administrative procedures and procedure for conducting administrative legal proceedings) are regulated by the Administrative Procedure Code of Kazakhstan dated 29 June 2020.

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

First instance courts	Courts of appellate instance	The court of cassation instance
district courts and courts deemed equivalent thereto	oblast courts and courts deemed equivalent thereto	RK <a href="#">Supreme Court</a> , the highest judicial body

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

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

Specialized Inter-District Court of Astana considers civil cases in connection with investment disputes<sup>8</sup>, as well as claims from governmental agencies to investors, which relate to investors' investment activities and involve:

<sup>8</sup> An investment dispute means a dispute arising from contractual obligations between investors and governmental agencies in connection with the investor's investment activities.

- foreign legal entity (its branch/representative office) carrying out entrepreneurial activities in the Kazakhstan territory;
- local legal entity where a foreign investor owns  $\geq 50\%$  of voting shares or participation interests in the charter capital;
- investors in case of presence of a concluded investment contract with the state.

To optimize and simplify the process of administration of justice, courts broadly use information technologies. A statement of claim, response, application, specific and appellate complaints and other procedural documents may be submitted in the electronic form using the "[Judicial Cabinet](#)" service. This service allows to keep track of the case progress and review judicial acts.

Courts perform audio and video recording of court sessions and use technical communication means allowing for remote participation in court sessions. This facilitates the participation in a judicial process of persons living or staying outside the location of court. During the quarantine measures, all courts conducted online sessions.

### ■ **First Instance Court Proceedings**

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

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

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

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

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

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

Certain categories of cases may be reviewed in writ or simplified proceedings. Particularly, the writ proceedings apply to claims for the performance of mediation agreements and pre-trial settlement agreements with respect to many categories of disputes, including claims for recovery of debts for taxes and customs payments from individuals. The simplified

proceedings apply to cases over claims for money recovery, if the claim value does not exceed 2,000 MCI for legal entities or 1,000 MCI for individual entrepreneurs and individuals. Cases subjected to writ or simplified proceedings are reviewed without summoning the parties, based on the written documents provided by them.

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

### ■ **Revision of Judicial Acts**

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

When filing an appellate petition, no state duty is payable. Motions to dispute judicial acts under a cassation procedure require payment of a state duty in the amount of 50% of the relevant state duty rate specified above in clause "*First Instance Court Proceedings*".

### ■ **Appellate Proceedings**

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

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

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

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

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

### ■ **Cassation Proceedings**

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

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

- acts on cases reviewed in simplified proceedings;

- acts on cases ended by amicable agreement or agreement to settle the dispute through mediation; or
- where the claim amount is < than 2,000 MCI for individuals or < than 30,000 MCI for legal entities;
- cases where proceedings have been terminated in connection with abandonment of claim;
- cases on debt restructuring and cases involving disputes arising in the course of rehabilitation and bankruptcy procedures.

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

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

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

Judicial acts not appealed via appellate procedure are not subject to revision by cassation, except where cassation proceedings are instituted upon submission by the Chairman of the Kazakhstan Supreme Court or upon a protest brought by the Kazakhstan 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; or
- revocation of an arbitral award, with respect to enforcement of which there has been issued a judicial act.

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

#### ■ **Proceedings in Cases with Participation of Foreign Persons**

Kazakhstan 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 Kazakhstan territory;
- the lawsuit stems from a contract, which was to be or was performed, in full or in part, in the Kazakhstan 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 Kazakhstan courts may review cases relating to the rights to immovable property located in Kazakhstan; cases upon claims against shippers stemming from shipping contracts, if the shipper is located in the RK, etc.

## 19.2. DISPUTE RESOLUTION BY ARBITRATION

The key provisions governing arbitration proceedings are defined by the Kazakhstan [Law](#) "On Arbitration" dated 8 April 2016. The arbitration rules are defined by the rules of permanent arbitrations.

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

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

## 19.3. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

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

Kazakhstan has acceded to the following international conventions:

- [Convention](#) on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958); and

- European [Convention](#) on International Commercial Arbitration (Geneva, 21 April 1961).

The list of grounds for a refusal to recognize and enforce foreign arbitral awards stipulated by the Kazakhstan Civil Procedure Code generally coincides with the list of grounds under the New York Convention, except for the following. The Kazakhstan Civil Procedural Code provides for one additional ground, pursuant to which it is possible to refuse to recognize and enforce a foreign arbitral award, if there is a legally effective court judgment or arbitral award issued in Kazakhstan in respect of a dispute between the same parties, concerning the same subject and for the same grounds, or there is a ruling issued by court or arbitral tribunal on termination of proceedings in a case in connection with claim withdrawal by a claimant.

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, Azerbaijan and Lithuania.

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

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

#### 19.4. COURT AND ARBITRATION OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

Starting 1 January 2017, the [Constitutional Law](#) "On the Astana International Financial Centre (AIFC)" dated 7 December 2015, which is the territory with a special legal regime in the financial sphere, entered into force in Kazakhstan. The AIFC has its own Court, which is beyond the Kazakhstan judicial system and resolves disputes according to the current procedural AIFC law. The AIFC law comprises, among other things, the AIFC acts based on the principles, norms and precedents of England and Wales and/or standards of the leading international financial centers, unless such acts contradict the above Constitutional Law.

The [AIFC court](#) considers and resolves the disputes, which:

- arise between the AIFC participants, the AIFC bodies and/or their foreign employees;

- relate to any operation conducted in the AIFC and governed by the AIFC law; and
- were referred to the AIFC Court by agreement of the parties.

The AIFC Court is composed of 9 justices headed by the Rt. Hon. the [Lord Mance](#), one of the top justices in the contemporary history of English law. The judicial proceedings in the AIFC Court are conducted in English.

The AIFC judgments are enforced in Kazakhstan in the same manner and on the same conditions as the judgments of the Kazakhstan courts, and no recognition of such judgments by a Kazakhstan court is required. If so requested by the party concerned, the AIFC court may issue an execution order for its judgment enforcement. In addition to the AIFC court's judgments, AIFC Court's orders on claim security and cancellation of claim security measures may also be enforced in Kazakhstan.

The International Arbitration Center (IAC) was also established under the AIFC, which considers disputes provided there is a respective arbitration agreement between the parties. 41 independent international arbitrators from all over the world participate in the IAC's work. The IAC's award issued in the AIFC is enforced in the AIFC territory based on a respective AIFC court's order, i.e. to enforce an arbitral award in the AIFC territory it is necessary to apply to the AIFC court. The awards of the IAC are recognized and enforced in Kazakhstan according to the same procedure as established for the recognition and enforcement of arbitral awards issued by the Kazakhstan arbitration tribunals. This means that in order to achieve recognition and enforcement of the IAC's award in the Kazakhstan territory it is necessary to apply to a Kazakhstan court. According to such application, a Kazakhstan court conducts judicial proceedings and issues a ruling on enforcement of the arbitral award, and later issues a writ of execution (enforcement order) with respect to such ruling.

At the same time, in practice, there is a situation where arbitral awards issued in the AIFC are enforced in Kazakhstan without undergoing the recognition procedure in a Kazakhstan court. Specifically, with respect to arbitral awards issued in the AIFC, the AIFC Court issues an order and a writ of execution. In turn, the writ of execution issued based on the order of the AIFC Court has the force of an enforcement document in Kazakhstan, i.e. it is directly accepted by court enforcement officers for work.

In 2019, the AIFC launched the eJustice electronic system allowing the parties to file claims and other procedural documents in the electronic form and gain access to online dispute resolution services using the cutting edge digital technologies.

Until 1 April 2023, the AIFC court and IAC did not charge for registration, administration and conduct of hearings. Furthermore, parties to a contract signed before 1 April 2023, which contains a clause on the jurisdiction of the AIFC court over disputes or an arbitration clause of the IAC, will be entitled to free-of-charge administration and resolution of disputes arising out of such contract even after 1 April 2023.

Presence of benefits with respect to judicial and arbitration fees, conduct of court and arbitration hearings in English under own procedural rules based on the rules and principles

of laws of England and Wales make the AIFC court and IAC an attractive platform for resolution of disputes involving foreign companies.

For more details about the AIFC court, IAC and its other advantages, please see [AEQUITAS review](#).

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## 20. DIGITAL ASSETS

The key legislative act governing the sphere of digital assets and mining is the [Law No. 193-VII of the Republic of Kazakhstan "On Digital Assets in the Republic of Kazakhstan"](#) dated 6 February 2023 ("**Digital Asset Law**").

### 20.1. LEGAL STATUS OF DIGITAL ASSETS IN KAZAKHSTAN

Digital assets in Kazakhstan are recognized as property created in the electronic and digital form with assignment of a digital code, including applying the cryptography means and computer calculations, registered and secured by information inalterability on the basis of the distributed data platform technology.

Types of digital assets:

Secured	Unsecured
<p>Digital asset registered by a digital platform for the storage and exchange of secured digital assets, which certifies rights to tangible, intellectual services and assets, except for money and securities.</p> <p>Rights certified by secured digital assets originate from the moment of making a record on transfer of digital assets to the said person on the digital platform for the storage and exchange of secured digital assets.</p>	<p>Digital asset obtained in an information system in the form of reward for participation in the support of the consensus in a blockchain, which does not express anybody's financial obligations, which may be used to trade in a digital form on the digital asset exchange.</p>

Issue and circulation of unsecured digital assets in the Kazakhstan territory are prohibited, except for the territory of the AIFC. Interaction with unsecured digital assets is allowed in the AIFC territory through the specialized digital asset exchanges, requirements to which are determined by the AIFC acts.

Unsecured digital assets are not recognized as financial instruments or financial assets.

Regulation of secured digital assets in Kazakhstan is determined by the Digital Asset Law, whereas issue and circulation of digital assets are allowed in the Kazakhstan territory in case of complying with a number of mandatory conditions.

Digital assets may only be issued and circulated by an individual entrepreneur or a legal entity of the Republic of Kazakhstan that operates a digital platform allowing to store and exchange the secured digital assets and hold relevant permits for the issue and circulation of secured digital assets.

Persons who issue and ensure circulation of secured digital assets are the subjects of financial monitoring and must notify individuals and legal entities of the risks in connection with purchase, possession and performance of operations with secured digital assets.

A digital asset is issued by way of making an entry on a digital platform for the storage and exchange of secured digital assets by a person who issues and ensures circulation of digital assets only after verifying its security.

For the purposes of the issue, a digital asset must concurrently meet the following requirements:

- certification of right to material, intellectual services and assets, except for money and securities;
- presence of a resolution on the issue of a secured digital asset (adopted by a person that issues and ensures circulation of secured digital assets and published on such person's Internet resource);
- not to be a unit of account, financial instrument or financial asset;
- to contain information on a person issuing such secured digital asset;
- to have confirmation of the property and/or other intellectual rights to an asset prior to its transformation into a secured digital asset; and
- presence of an entry in a blockchain regarding removal of an asset and/or right to property.

If a digital asset fails to meet these requirements, it will be recognized as an unsecured digital asset.

## 20.2. CURRENT STATUS OF MINING IN KAZAKHSTAN

Digital mining is the process of generating new blocks in a blockchain, which is performed using the computing capacity of a computer. Mining is qualified only as entrepreneurial activities.

The digital mining activities are carried out by digital miners through a digital mining pool using the digital mining data processing center.

A digital mining pool is an accredited legal entity providing the service of uniting the capacities of a software and hardware complex for the digital mining of digital miners, which distributes digital assets among the digital miners gained in the course of their joint activities.

Mining activities are carried out based on a special license issued for two categories:

- Category I – digital miners holding the required infrastructure, which is the data processing centers meeting the requirements to equipment, location and safety.
- Category II – digital miners holding relevant equipment that lease slots at the data processing centers and do not pretend for the energy quota.

Regardless of the category, a license is issued for 3 years.

Miners must meet the following qualification requirements:

- to possess the status of a Kazakhstan legal entity or an individual entrepreneur;

- to hold under the right of ownership or any other legal ground a digital mining data processing center or the right to place a software and hardware complex for the purposes of digital mining, which belongs to it under the right of ownership, in the data processing center;
- equipment must be included in the register of software and hardware complex for the digital mining;
- digital mining data processing center must be located outside the housing area (does not apply to the license category II);
- presence of an automated system for commercial accounting of electrical energy, telecommunications system ensuring unification with the software and hardware complex systems, load cut out devices installed with the system operator and power transmission organization when connecting to their networks (does not apply to the license category II and to the persons using electrical energy produced by autonomous generating units not connected to the unified power system of Kazakhstan); and
- to carry out activities only through a digital mining pool.

At least 75% of the total amount of digital assets received as a result of digital mining in the Kazakhstan territory must be sold through the digital asset exchanges holding a license from the AIFC (until 1 January 2025 this restriction obligates miners to sell digital assets in the amount of at least 50%).

Digital miners are prohibited to carry out other activities not relating to the digital mining activities or purchase participatory interests in the charter capital or shares in legal entities, set up and participate in activities of non-for-profit organizations, except for the membership with a self-regulated organization and Atameken.

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

*"AEQUITAS worked with great efficiency and well under the proposed budget. The team members are attentive to detail and provide complex legal support."*

Chambers Asia Pacific 2023

*"AEQUITAS is very responsive, flexible and thoughtful with regard to the client's business concerns."*

Asialaw Profiles 2023

*"Aequitas provides very high-quality legal services in Kazakhstan; we had no doubts about who to contact for advice. The work was done clearly within the agreed time frame, and we received the most comprehensive answers to our questions."*

The Legal 500 2023

*"A very thoughtful analysis and professional advice. Deep knowledge and thoughtful analysis of the underlying matter."*

IFLR1000 2022

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

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

AEQUITAS is one of Kazakhstan's leading law firms acknowledged in the global legal services market. For many years, international legal guides, including [Chambers & Partners](#), [Who's Who Legal](#), [The Legal 500](#), Best Lawyers, [Asia Law Profiles](#) are rating AEQUITAS and its partners and associates as the **country's most recommended** professionals in the Energy & Natural Resources, Corporate & Finance, M&A, Dispute Resolution and other areas. Certain guides specifically acclaim the firm's Labor, Environmental and Healthcare & Pharmaceuticals practices.

AEQUITAS was recognized as the **"Firm of the Year" in Kazakhstan** within the [WWL Awards 2022-2023](#).

The firm's clients are companies active in the key sectors of economy from **more than 50 countries**, including major international corporations, world famous brands, leading 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 providing high quality services. Alongside with providing legal services of invariably high quality, AEQUITAS is regularly informing its clients of the business-relevant changes in legislation, organizing practical trainings and workshops.

AEQUITAS reputation is supported by close professional cooperation with the world's leaders in the legal consulting services sphere, including Magic Circle (Allen & Overy; Clifford Chance; Freshfields Bruckhaus Deringer; Linklaters; Slaughter and May); Herbert

Smith Freehills; Hogan Lovells; Norton Rose Fulbright; Stephenson Harwood; Cleary Gottlieb Steen & Hamilton; Latham & Watkins; Skadden, Arps, Slate, Meagher & Flom; CMS; Ashurst; DLA Piper; Jones Day; King & Wood Mallesons; Debevoise & Plimpton; Eversheds Sutherland; Morgan, Lewis & Bockius; Bird & Bird, ALRUD, Egorov Puginsky Afanasiev & Partners, Pepeliaev Group, Andrey Gorodissky & Partners, and others.

The firm's counsel are leading Kazakhstan and foreign experts in many areas of law renowned scholars, specialists from different sectors of economy and representatives of international organizations.

AEQUITAS and its lawyers are members in different professional organizations and unions, including Kazakhstan Bar Association (KazBar), Kazakhstan Petroleum Lawyers' Association (KPLA), European Business Association of Kazakhstan (EUROBAK), International Bar Association (IBA), Ius Laboris (largest alliance of consultants in the sphere of labor law), TerraLex (international network of law firms), Eurasian Antitrust Association, and British-Kazakh Law Association under the British-Kazakh Society.

AEQUITAS experts are on the lists of arbitrators for arbitration tribunals and 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 are regularly published in local and international mass media.

AEQUITAS experts have been actively participating in the development and improvement of many most important acts of Kazakhstan's civil and economic legislation, including the Civil Code, Foreign Investment Law, Petroleum Law, Subsoil and Subsoil Use Law, Law on International Commercial Arbitration, Merchant Shipping Law, and other. During the recent years, AEQUITAS team has participated in pro bono development and discussion of the Law on Responsible Animal Treatment, which was put into effect in Kazakhstan on 2 March 2022, including other legislative acts aimed at responsible animal treatment and protection against cruelty.

The firm's current 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.

AEQUITAS has offices in Almaty and Astana. Starting 2019, AEQUITAS has been also providing legal and consulting services in the AIFC territory and representing its clients in the AIFC Court and IAC.

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**CONTACT INFORMATION****Almaty:**

47 Abai Ave., Office 2  
Almaty 050000,  
Republic of Kazakhstan  
T: +7 (727) 3 968 968  
E: [aequitas@aequitas.kz](mailto:aequitas@aequitas.kz)

**Astana:**

55/22 Mangilik El Ave.,  
block C4.3, Office 134  
Astana 010017,  
Republic of Kazakhstan  
T: +7 (7172) 987 261,  
+7 (7172) 987 295  
E: [astana@aequitas.kz](mailto:astana@aequitas.kz)

When preparing this Review, we focused on the issues most often arising in the course of setting up and doing business in Kazakhstan. However, the range of such issues is much broader and each issue has its own details and specifics.

On our part, we are always ready to assist you.