

November 2013

Kazakhstan Business Updates

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Preface

*Welcome to the latest edition of **Kazakhstan Business Updates**, which provides helpful and practical guidance on recent legislative changes affecting investors' day-to-day operations in the country, as well as articles of interest on specific areas of law. This guide will help you understand, apply and comply with today's laws in Kazakhstan. New trends and developments are explained concisely for quick reference and ease of understanding.*

It should be noted that this guide is not an exhaustive list of all new legislation but a summary of new legislation that we feel may of interest to you. Should you require further detail on any of the laws referenced in this publication, please contact us.

*We wish you prosperity in your business and hope that this issue of **Kazakhstan Business Updates** will serve as a practical reference to help you establish, maintain and build a successful business in today's competitive environment.*

Please note that information contained in this edition does not constitute legal or any other advice on any particular matter. We recommend our readers seek comprehensive professional advice before entering into any transaction.

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Dear Readers,

We are delighted to welcome you to our new law firm, Dentons!

Dentons is built on the solid foundations of international law firm Salans, Canadian law firm Fraser Milner Casgrain (FMC) and international law firm SNR Denton. The firm is now placed amongst the top seven full-service law firms globally and operates from over 75 locations in more than 50 countries across Africa, Asia Pacific, Canada, Europe, the CIS, the Middle East, the UK and the US.

In Kazakhstan, following the global combination, the Almaty teams of legacy Salans and SNR Denton have joined together to form the leading and the largest international law firm in the country. Now we can offer you increased service and expertise from a single office - Dentons Kazakhstan. Our combined practice has over 45 fee earners (including six partners), and we plan for further growth yet this year.

You can now benefit from our enhanced capabilities across sectors, service lines and geographies. Our lawyers' unparalleled experience in such practice areas as oil and gas, mining, banking and finance, M&A, dispute resolution, intellectual property, real estate and construction, PPP and infrastructure projects will help you get your deal done or your dispute resolved.

Another milestone in our development this year is the opening of a new office in Astana. The Astana office is headed by newly promoted Partner Birzhan Zharasbayev, who specializes in construction and real estate, infrastructure and PPP, corporate and commercial matters and M&A. We opened the office in July 2013 to be an integral part of Dentons' existing Kazakhstan practice. It will enable us to service the growing number of national and international clients doing business in Astana more quickly and efficiently on the ground.

We are committed to providing you with the highest quality services, while at the same time building the rule of law in Kazakhstan and upholding the principles that make Dentons an outstanding firm in Kazakhstan's legal market today.

We anticipate our continued cooperation as we move forward as Dentons.

*Aigoul Kenjebayeva
Managing Partner
Dentons Kazakhstan*



Legal Aspects of M&A transactions in Kazakhstan

Targets of the M&A transactions

Business activity in Kazakhstan is usually conducted either through joint stock companies / corporations ("JSC") or through limited liability partnerships / limited liability companies ("LLP" or "LLC").

The common feature of these business associations is that the liability of their partners or shareholders is limited to the equity contribution of the partners or shareholders to the respective legal entity. The principal differences between the JSC and LLP legal regimes are stricter and more detailed regulation and oversight of JSCs by the competent authority, stricter requirements for protection of minority shareholder rights and for transparency of business activity, management, and reporting, etc.

Consequently, the LLP (sometimes referred to as "LLC") is the most popular form of doing business in Kazakhstan. Notably, some of the largest Kazakhstan companies are organized as LLPs. However, many different factors, including the company's capital structure, its business strategy, and certain mandatory provisions of Kazakhstan law, affect the final choice of the legal form of a company. In a number of cases, Kazakhstan law requires that business be conducted via JSC in certain sectors of the economy. For example, commercial banks, professional participants of the securities market,¹ insurance companies, non-governmental pension funds, air carriers regularly providing transportation services, and stock exchanges may be organized only as JSCs. In some other cases, Kazakhstan law prescribes the LLP as an obligatory form for conducting business. For example, a commercial microcredit organization may be organized only as an LLP. The most important difference between LLP

and JSC in the context of M&A is transfer of ownership of JSC shares or of LLP participation interest. According to Kazakhstan securities laws, transactions involving JSC shares² must be registered with the JSC's registrar and the ownership in the JSC shares vests in the new owner upon registration of the transaction. In contrast, LLP participation interests are not considered securities, and transfer of ownership in LLP participation interest is governed by Kazakhstan's civil laws. Kazakhstan law does not require mandatory registration of the transfer of the LLP participation interest with any competent authority. Hence, ownership of an LLP participation interest arises upon conclusion or fulfillment of the contract – depending on its terms. However, because LLPs do not by default use registrars, the law requires re-registration of an LLP with the appropriate agencies upon change to the LLP participants. This procedure ensures that the state and/or the public are given notice of a transfer of ownership in LLP participation interest. According to Kazakhstan law, even though the ownership in the participation interest is transferred according to the terms of the contract, the participant's right to dispose of his participation interest arises upon the change of the LLP's constituent documents and registration thereof with the appropriate state agencies.³

Kazakhstan law allows an LLP to enter into an agreement with the Consolidated Securities Register⁴ for maintenance of its register of participants. In this case, in the event of a change to the participants of the LLP, there is no need for registration with the justice authorities. New participants are admitted to an LLP whose register is maintained by the registrar by means of an entry in the register of participants. This option is becoming more popular in M&A

transactions involving participation interests in LLPs, since it enables the parties to best observe the balance of interests when closing a transaction.

Another requirement of Kazakhstan law affecting the structure of M&A transactions is that an LLP may not have as its sole participant another sole-participant LLP. For example, the sole participant of an LLP may not be a foreign (e.g. offshore) company with only one participant or shareholder.

Restrictions on foreign ownership

Kazakhstan law imposes several restrictions on acquisition or ownership by foreign persons/entities of a certain number of shares or participation interest in a Kazakh legal entity conducting business in certain sectors of the economy. The table overleaf generally⁵ summarizes some of these restrictions for the most attractive investment sectors.



1. Excluding broker-dealers not maintaining client accounts, registrars, and stock transfer agents.

2. In this case we are considering share transactions outside of exchanges.

3. Paragraph 6. Normative Decree No.2 "On some questions of applications of law on limited and supplemental liability companies/partnerships" of the Supreme Court of the Republic of Kazakhstan dated 10 July 2008 (as amended on 25 June 2010).

4. <http://www.tisir.kz>.

5. Certain facts, details, and exceptions exist in every particular case and require specific legal advice.

Economic Sector	Restrictions on foreign persons/entities
<i>Mass media</i>	<i>Up to 20 % of shares/participation interest</i>
<i>Air carriers regularly providing transportation services</i>	<i>Up to 49% shares/participation interest</i>
<i>Telecommunications</i>	<i>Prohibition on management or operation of the main lines of communications</i>
<i>Telecommunications, as an operator of long-distance and (or) international telecommunications, which owns communication landlines (cable, including fiber optics, radio relay)</i>	<i>Up to 49% shares/participation interest</i>
<i>Commercial banks and insurance companies</i>	<i>Exclusion of offshore companies registered in certain offshore areas</i>

Approval of M&A transactions by the governmental agencies

General information on various key approvals by the state agencies possibly required for M&A transactions is provided below.

According to Kazakhstan law, in some cases, the Republic of Kazakhstan has a priority right to purchase the shares / participation interest in a Kazakhstan legal entity proposed for sale. Priority right to purchase is also supplemented by the owner's obligation to obtain the government authority's permission to sell.

State's priority right to purchase / permission to transfer strategic assets

Transfer of shares / participation interest in a Kazakhstan entity that owns strategic assets, as determined by the government, requires prior permission to transfer and satisfaction of the state's priority purchase right. The government compiles lists of strategic assets which include shares or participation interest in legal entities that own strategic assets, as well as shares or participation interest owned by individuals and/or legal entities directly or indirectly capable to determine or to influence decisions of legal entities that own strategic assets. Hence, transfer of such shares or participation interest in such persons requires permission to transfer and must comply with the requirements of Kazakhstan law with respect to the priority right of the Republic of Kazakhstan to purchase.

State's priority right to purchase / permission to transfer in the sphere of subsoil use

As a general rule, the government also has a priority right to purchase subsoil use rights offered for sale under subsoil use contracts and to acquisition of ownership interest in legal entities that own rights to subsoil use, as well as in legal entities with the ability to directly or indirectly control/influence decisions of a subsoil user if the main activity of the legal entity exercising control/influence is related to subsoil use in Kazakhstan. In such cases, transfer of shares or participation interest requires permission to transfer. Kazakhstan law defines a procedure to satisfy the government's priority purchase rights and to obtain permission to transfer.

Approvals for financial organizations (banks and insurance companies)

According to Kazakhstan law, as a general rule, no single person acting alone or jointly with another person may, without prior written consent of the competent authority, be: (1) a major participant in the bank, i.e. own, directly or indirectly, 10% or more of the outstanding bank's shares (net of preferred shares and shares repurchased by the bank), (2) a bank holding company, i.e. own, directly or indirectly, 25% or more of the outstanding bank's shares (net of preferred shares and repurchased by the bank). Kazakhstan law defines a procedure to obtain such an approval, including a list of documents required for submission to the competent authority.

Notably, such an approval is also required in some cases where major participation or bank holding thresholds are reached with indirect ownership in a Kazakhstan bank.

Similar requirements to secure an approval by the competent authority exist for M&A transactions involving insurance companies.

Approvals for natural monopolies

Kazakhstan law requires prior notification of the competent authority in cases of acquisition by individuals or legal entities (or groups thereof) of more than 10% of the voting shares (or participation interest) in the charter capital of a natural monopoly. Due to imperfect legislation in this matter, filing such notice in practice does not completely exclude the risk that the competent authority will oppose the transaction.

Approvals of economic concentration

According to Kazakhstan antitrust laws, economic concentration is defined, inter alia, as the acquisition by a person (or group of persons) of voting shares/participation interest in the charter capital of a market actor, in which such person (or group of persons) acquires the right to control more than 25% of the shares/participation interest if, before such acquisition, such person (or group of persons) did not control shares/participation interest of such market actor or controlled 25% or less of the voting shares/participation interest in the charter capital of such market actor.

In case of such acquisition, consent of the antimonopoly authority is required if the aggregate book value of the assets of the acquirer (or group of persons) and of the target market actor or their aggregate sales of goods for the last fiscal year exceed approximately US\$115,400,000, or if one of the persons involved in the transaction is a market actor with dominant or monopoly position in the relevant market.

Corporate approvals

A number of internal procedural issues must also be taken into account when implementing an M&A transaction.

Priority purchase right of LLP participants

According to Kazakhstan law, as a general rule, LLP participants have a priority right to purchase participation interests sold by the LLP's other participants. Kazakhstan law determines the sale procedure that satisfies such priority purchase rights. If the sale of participation interest violated the LLP participants' priority purchase rights, any LLP participant may, within three months of such sale, petition the court to transfer rights and duties of the buyer to him. If the LLP participants fail to exercise their priority right to purchase participation interest, the LLP itself may exercise its priority purchase right.

Unlike LLP participants, JSC shareholders do not have a priority right to purchase the JSC shares sold by the JSC's other shareholders.

Procedure for sale and purchase of 30% or more shares in a JSC

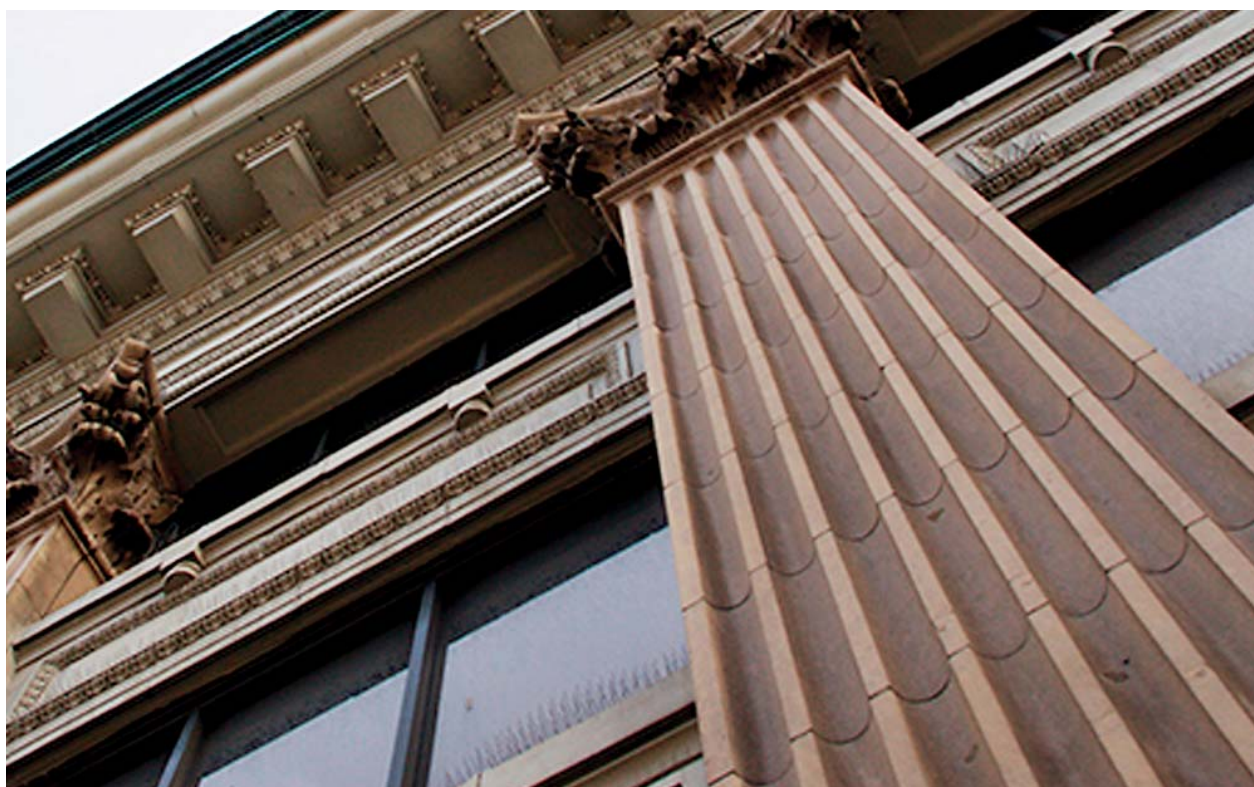
According to Kazakhstan law, a person intending to purchase 30% or more of the JSC's voting shares on the secondary securities market must notify the JSC and the competent authority in the manner established by the competent authority. Within thirty days after such acquisition, such person must publish in the media an offer to the remaining shareholders to buy their shares in the JSC. Kazakhstan law specifies the procedure to make such an offer, as well as the consequences of non-compliance with such procedure.

Unlike laws of some other countries, Kazakhstan law does not give a person acquiring a majority shareholding (regardless of the size of that majority) the right to forcibly buy out shares of the remaining shareholders (squeeze out).



Rahim Shmarov
Senior Associate
Knowledge Management Director

Rahim's specific expertise includes general corporate and commercial matters, structured finance transactions, public equity issuance, mergers, acquisitions, joint ventures, and venture capital matters. Rahim has expertise in both Kazakh and Kyrgyz law and is often involved in cross-border transactions.



Changes to the Rules for Issuing Work Permits

The Rules for Establishing Quotas for Hiring Foreign Labour in the Republic of Kazakhstan (hereinafter the “Rules”) were amended by RK Government Decrees No. 44 of 25 January 2013 and No. 467 of 8 May 2013 “On Amendment of RK Government Decree No. 45 of 13 January 2012 ‘On Approval of the Rules for Establishing Quotas for Hiring Foreign Labour in the Republic of Kazakhstan’, the Rules and Terms of Issuing Permits to a Foreign Employee for Employment and to Employers for Hiring Foreign Labour, and On Amendment of RK Government Decree No. 836 of 19 June 2001 ‘On Measures for Implementing the Law of the Republic of Kazakhstan of 23 January 2001 ‘On Employment of the Population’” (hereinafter “Decree No. 44” and “Decree No. 467”). Decree No. 44 entered into force on 24 March 2013, while Decree No. 467 took effect on 30 June 2013.

A number of amendments were introduced to the Rules by the above Decrees with regard to the following:

1. Simplified submission and receipt of documents

Decree No. 44 has simplified the procedure for submitting and receiving documents to the relevant authorized body. Now all communication with the competent authority in order to obtain a permit may also be carried out via the ‘E-licensing’ state database system (via the official website at www.elicense.kz). To do this, the applicant must first register with the system and obtain a digital signature.

2. Added ground for refusal of permit issue/extension

Under Decree No. 44, an additional basis for refusing to issue or extend a foreign employee hiring permit has been introduced. Permits may now be denied if the level of education/professional training and the practical experience/record of foreign

employees does not correspond to the qualification requirements set for employees’ professions according to the “Unified Wage-Rates and Skills Reference Book for Jobs and Occupations of Manual Workers” and the “Managers, Specialists and Workforce Qualification Reference Book”.

3. Shortened list of documents required to obtain a permit

Decree No. 44 has shortened the list of documents required to obtain a foreign employee hiring permit and foreign employee intra-company transfer permit. It is no longer necessary to submit: (i) a confirmation on the presence or absence of prior convictions, (ii) a medical certificate confirming the absence of diseases preventing the type of work concerned and (iii) medical insurance.

4. Local staff

According to clause 8 of the Rules, foreign employee hiring permits shall be issued and extended subject to the employer complying with the following terms:

- 1) the number of Republic of Kazakhstan citizens must not be less than 70% of the total number of first and second category¹ staff;
- 2) the number of Republic of Kazakhstan citizens must not be less than 90% of the total number of third and fourth category staff.

According to the amendments introduced by Decree No. 467, representative offices of foreign legal entities are now exempt from compliance with the above terms. This means that, for the purpose of obtaining work permits, the number of foreign employees in representative offices of foreign legal entities is not limited.

5. Special conditions of permit issuance/extension

Clause 15 of the Rules provides that

employers must perform certain special activities, should a permit to hire foreign employees be issued/extended, namely:

- 1) professional training courses for Republic of Kazakhstan citizens specializing in technical and professional education in demand in a regional labour market, in accordance with a list approved by the authorized body;
- 2) refresher training courses for Republic of Kazakhstan citizens specializing in technical and professional education in demand in a regional labour market, in accordance with a list approved by the authorized body;
- 3) advanced training courses for Republic of Kazakhstan citizens; or
- 4) the creation of additional jobs for Republic of Kazakhstan citizens.

One or more such special activities should be selected by the employer when obtaining/extending a work permit. The selection of certain activities by the employer depends on the category of foreign employees hired. The employer should perform or begin performing (depending on the activity type) the chosen activity during the validity period of the permit. Any failure to fulfil such conditions may in future result in the authorized body refusing to issue other permits or extend the validity of an existing permit.

According to the amendments introduced by Decree No. 467, representative offices of foreign legal entities are exempt from the above special conditions. In other words, Representative Offices of foreign legal entities are no longer obligated to meet any special condition in order to obtain a work permit.



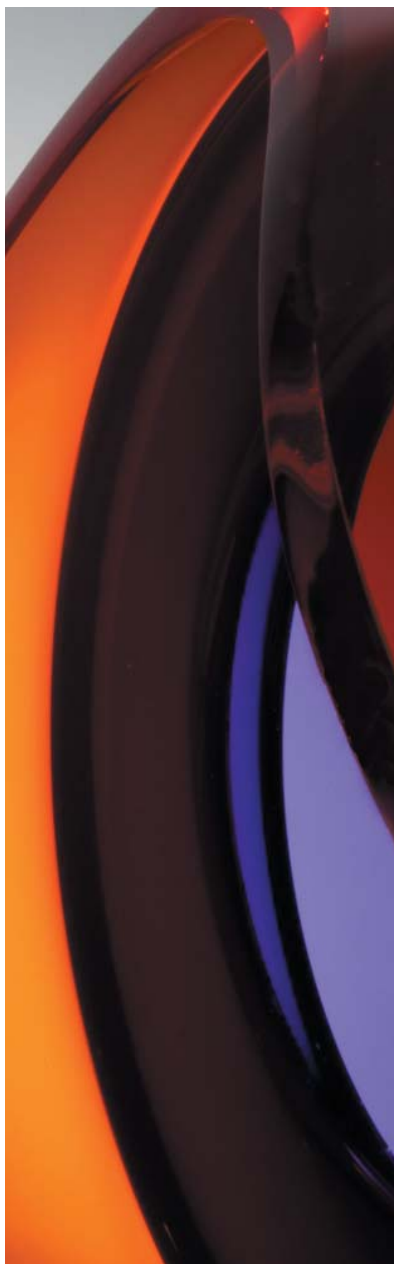
Saida Tlenchiyeva, Senior Associate

Saida has expertise in corporate law, employment law, and foreign exchange control. She has also participated in a number of court cases involving labor, land and other issues.

1. For the purposes of determining the permit issuance and extension conditions and procedure, the Rules establish the following categories of employees:

- 1) category I – CEOs and their deputies;
- 2) category II – heads of structural subdivisions who meet the qualification requirements established by the managers, specialists and workforce qualification reference book;
- 3) category III – specialists who meet the qualification requirements established by the managers, specialists and workforce qualification reference book;
- 4) category IV – qualified workers who meet the qualification requirements established by the Unified Wage-Rates and Skills Reference Book for Jobs and Occupations of Manual Workers.

Data Protection



A new law¹ regulating the collection and processing² of personal information³, and defining the principles and legal framework for these activities, comes into force on 26 November 2013.

The Law clarifies issues relating to the collection and processing of personal information, significantly expanding Kazakhstan's body of law in this area.

The Law remedies a number of deficiencies in the legislation on personal information. In particular, it establishes:

- 1) definitions of actions to be performed with personal information (collection, processing, dissemination, depersonalization, etc);
- 2) definitions of entities involved in the process of collecting and processing personal information (e.g., owner of personal information, owner of the database containing personal information, database operator, third parties);
- 3) circumstances in which the collection and processing of personal information without the consent of its owner is permitted;
- 4) conditions for the cross-border transfer of personal information;
- 5) obligations relating to depersonalization of data and subsequent destruction of personal information;
- 6) rights and duties of owners of personal information and owners and operators of

databases containing personal information; and

7) the authority of state bodies regarding security and protection of personal information.

The Law has not changed the main principles of collecting and processing personal information that were established earlier by the Law on Informatization, i.e. that:

- 1) personal information may be collected and processed only with the consent of the owner of such personal information;
- 2) persons who collect and process personal information must ensure its confidentiality;
- 3) personal information may be processed only for the purpose stated at the time of its collection;
- 4) personal information may be disseminated/disclosed to third parties only upon the consent of the owner of the personal information.

The above principles should be taken into consideration in particular when drafting a consent to the collection of personal information. In addition to a statement of voluntary disclosure of personal information, such a consent should specify the purpose of the use of personal information and, if necessary, include consent to the disclosure of personal information to third parties.

1. Law No. 94-V of the Republic of Kazakhstan On Personal Information and Its Protection dated 21 May 2013 (hereinafter the "Law").

2. Actions related to the processing of personal information are rather extensively defined in the Law on Personal Information and include actions aimed at acquisition, storage, amendment, use, dissemination, depersonalization, blocking and destruction of personal information.

3. Personal information is defined in the Law on Personal Information as information related to a specific owner of personal information or owner of personal information identified on the basis of personal information, recorded in electronic, paper and/or other physical storage media.

The Law addresses the issue of the form consent to collection and processing of personal information by its owner should take. The Law specifies that the owner (or his/her legal representative) must grant/withdraw consent to collection and processing of personal information either (1) in writing, (2) via an electronic document, or (3) by other means that make use of security measures that do not contradict RK law.⁴

As to the first of these, as a general rule a transaction which is concluded 'in writing' must be signed by the parties or their representatives. The RK Civil Code also establishes transaction forms that are deemed to be equal to written form.

The second (consent in the form of an electronic document) is, in our view, unlikely to be widespread, as according to Kazakhstan law, an "electronic document" is a document where information is provided in electronic-digital form and authenticated by means of an "electronic digital signature".⁵ The procedure for obtaining and updating electronic digital signatures⁶ in Kazakhstan is rather complicated and transactions authenticated by a digital signature are not particularly popular.

As for the third method of consent ("other means that make use of security measures"), neither the Law nor other statutory instruments of the RK explain what such means of obtaining consent to the collection and processing of personal information may be, nor what the requisite 'security measures' are.

With the burgeoning popularity of e-commerce in Kazakhstan, and the increasing collection of data via such means as loyalty/discount cards, it is increasingly common for sensitive personal data to be

collected via website forms. In our opinion, the 'other means' of indicating consent referred to above are sufficiently broadly drafted to enable a consent to this form of data collection to be given electronically (for example by use of a 'check box' in a website form), provided the wording of the consent is sufficiently clear.

From the information owner's perspective, it appears that the legislators could have provided more clarity about the nature of the consent required. It is likely that businesses collecting data in this way will adopt practices which are widely used in ecommerce fields (such as the use of privacy policies, and confirmations required before transactions can be concluded). For any business engaging in e-commerce in Kazakhstan (which includes any site which permits transactions to be concluded electronically from within Kazakhstan) or otherwise collecting personal data, it will be important to review policies and procedures to ensure that they are compliant with the Law.

As we see it, the Law does not contain clear provisions concerning the period for storing personal information. The Law establishes that personal information must be destroyed upon termination of legal relations between the owner of the personal information and the owner or operator of the database containing personal information. It may be difficult to determine when legal relations between two parties 'terminate'. For example, when a consumer purchases goods online, do legal relations terminate with delivery and acceptance of the goods, or on expiry of any explicit or statutory warranty period. Collectors of personal information may also have a legitimate interest in retaining information beyond the

termination of legal relations (for example to substantiate sales records for tax purposes).

In the event that legal relations do not terminate, the storage period will be determined based on the date when the purpose of collecting and processing personal information is achieved. However, in many situations it may be difficult to determine which precise date could be considered as achieving the purpose. Where data is collected for ongoing marketing purposes, it may be that the period is indefinite.



4. Law on Personal Information, article 8.1.

5. Law of the Republic of Kazakhstan On Electronic Document and Electronic Digital Signature dated 7 January 2003 No.370-II.

6. An electronic digital signature must be renewed annually.

To this end, we would recommend establishing a specific storage period for personal information in the consent wording.

In elaboration of the Law, the Government of the RK adopted the Rules on Performance of Measures for Protection of Personal Data⁷. The Rules will come into effect on 26 November 2013 as the Law. The Rules on Performance of Measures for Protection of Personal Data establish general requirements on protection of confidentiality of personal data, the period when confidentiality obligations should be fulfilled, measures by which confidentiality

should be ensured, such as organizational, technical and legal measures. The Rules on Performance of Measures for Protection of Personal Data require that owners, operators and third parties define the place for storage of personal data, persons who conduct collection and processing of personal data, and measures that prevent unauthorized access to personal data.

Owners and/or operators of databases containing personal information are obliged to bring their policies and procedures into compliance with the Law's requirements within three months from the date of its enactment, i.e. before 27 February 2014.

7. The Rules on Performance by the Owner and (or) Operator, and the Third Party of Measures for Protection of Personal Data adopted by the Decree of the Government of the Republic of Kazakhstan dated September 3, 2013 No. 909 (hereinafter the "Rules on Performance of Measures for Protection of Personal Data").



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Nataliya specializes in intellectual property law, with particular emphasis on the protection and enforcement of copyright, trademark and patent rights. She advises multinational companies on anti-counterfeit activity and represents clients in trademark and copyright litigation proceedings.

Concession Regulations

In July 2013, amendments were introduced in the Concession Law designed to enable further modernisation of the regulatory regime of concessions in line with the internationally recognized principles of public-private partnerships. A number of substantial amendments were made by the respective Law.

Firstly, changes were made in the definition of "concession", which now does not specify the identity of the owner of a concession object. Secondly, different types of concession agreement were introduced, which now may incorporate elements of one or more types of agreements named in the Concession Law, as well as the elements of other agreements to the extent compliance with the Kazakhstan legislation. Thirdly, the term "Public-Private

Partnership" was introduced as a statutory definition, and which refers to "a form of co-operation between the State and subjects of private entrepreneurship aimed at financing, establishment, re-construction and/or maintenance of social infrastructure and life support facilities. Fourthly, additional sources were introduced from which a concessioner may obtain profit or compensation of his expenditures. Fifthly, a concessioner was given a right to pledge his rights under a concession agreement or transfer such rights and obligations by way of assignment or debt delegation subject to a concession originator's written consent. Sixthly, two-staged tender procedure for concessionaire selection was introduced, enabling a separate consideration of the best technical (design) and financial proposals.



Birzhan Zharasbayev
Partner, Astana office

Birzhan's expertise includes construction and real estate, infrastructure and PPP, M&A, corporate and commercial matters. He has acted as a lead lawyer on several major M&A and development projects and frequently represents clients in high-level negotiations with Kazakhstan's government.

Economic Concentration in Kazakhstan: Latest Amendments and Practice

State control over economic concentration in Kazakhstan continues to impede the completion of transactions and affects the attractiveness of the country for investment.

One of the procedures limiting investment is excessive state control of economic concentration, requiring the prior consent of the Antimonopoly Agency for the transactions referred to in article 50 of the RK Law on Competition (the "Law").

A new law was adopted in March 2013 to improve the situation, in particular by: a) increasing the thresholds triggering the need for the prior consent of the antimonopoly agency ("Agency"); (b) introducing a notification procedure (to replace consent) with respect to certain transactions which are deemed to constitute 'economic concentration', and (c) redefining a "group of persons" for the purpose of the threshold tests.

The Amendments made substantial changes, and are seen as a step in the right direction. However, certain provisions are still drawing questions from market participants, and obstructing the simplification of the Agency's prior consent procedure. Below we summarize the most significant of those changes and some practical issues of implementation thereof.

An increase of the size of market participant threshold

One of the challenges of the previous legislation was that even relatively small transactions defined as an economic concentration could be subject to approval by the Agency:

- If total book value of the assets of the reorganised market participants or of the acquirer (its group) and of the acquired voting stock of the granting market participant exceeded 2 million times the monthly calculated index¹ on the day of filing of the application (approximately USD 21,800,000); or

- If their total sales revenue for the previous fiscal year exceeded 2 million times the monthly calculated index (approximately USD 21,800,000) on the day of filing the application; or

- One of the transaction participants was an entity with dominant or monopoly power on the respective market of goods or services.

The Amendments increased this threshold to 10 million times the monthly calculated index (approximately USD 113,200,000). Thus, some transactions within the said threshold that were previously subject to approval by the Agency will no longer be subject to approval by the Agency.

However, since the thresholds aggregate the turnover (or assets, and note that this does not refer to net assets, but total book value) of the target company with that of the acquirer and its group of companies, the thresholds are still relatively low. Many of the international companies that are tempted to invest in Kazakh businesses will meet these tests, and so the acquisition of a Kazakh business of any size will trigger the need for Agency consent.

Transactions subject to approval

Introduction of notice requirement (instead of approval) in certain economic concentration transactions

Under the previous law, prior approval of the Agency was required for transactions where there was i) an acquisition by a market participant of rights allowing such market participant to issue obligatory executive orders, to another market participant, on performance of the latter market participant's business activities or to

serve as the latter market participant's executive body or ii) participation of the same individual (s) on the executive bodies, boards, supervisory councils, or other management bodies of two or more market participants if such individuals exercised control over the way business activities of said market participants was conducted.

The Amendments changed this rule to the effect that if one of the above circumstances is true and the above discussed thresholds are met, such transactions can be executed upon written notice to the Agency. Notice must be provided within 45 days after execution of the relevant transaction.



1. In 2013, the monthly calculated index is equivalent to 1731 tenge (approx. USD 11.55).

At first glance it may seem that these amendments are intended to improve the consent procedures for market participants. However, from a practical viewpoint the proposed amendments are not significant. First, the list of documents to be presented to the Antimonopoly Authority with the notice is the same as for obtaining consent to economic concentration. The issue here is that the current law requires large market participants submitting petitions to present a large volume of documents and information, which may take several months to review. Second, the Agency continues to have the right to cancel transactions or suspend closing for 45 days from receipt of the notice. The practical effect of the second factor is that due to the risk of cancellation the parties must still wait for review of the notice to be completed before closing the transaction.

Incorporation

The Law provides an exhaustive list of the transactions that are deemed 'economic concentration'. This list does not include the establishment of a market participant, and there prior consent of the Antimonopoly Authority is not required. This was confirmed by the Antimonopoly Authority in an official letter of November 11, 2009 No. 03-5/7503.

However, in a recent reply, the Antimonopoly Authority took a different position and asserted that the notion of "acquisition of rights to property" encompasses the notion of "creation". Under this analysis, the acquisition by a market participant of more than 25 percent of a new company (i.e. the company to be established), provided the established threshold is met, would be 'economic concentration' and require prior consent.

The situation described above suggests that there is no clear position on this issue in the law or enforcement practice. This uncertainty is harmful to the national economy and must be rectified as soon as possible. Most foreign companies say that practically all of them will trigger the established threshold (10,000,000 MCI, approximately USD 113,200,000) when establishing e.g. a joint venture in Kazakhstan. Therefore, we see no justification for requiring the consent of the Antimonopoly Authority for the establishment of companies and/or joint ventures in Kazakhstan, or when Kazakhstani companies establish companies and/or joint ventures abroad.

Change of definition of "group of persons"

The previous law defined a "group of persons" among others as a person that had the right to directly or indirectly (via third parties) control more than 25% of the voting stock of the legal entity.

The Amendments increased this threshold to 50%. Thus, affiliated entities that were previously considered "group of persons" that do not meet the 50% threshold will no longer be considered "group of persons." This would allow submitting to the Agency less information in the course of preparation

of the application without describing the companies where the buyer (or its ultimate parent company) controls less than 50 % of stock.

Giving consent to economic concentration in case of establishment or strengthening of the dominant or monopoly position

Pursuant to the previous Law the Agency had authority to give consent to economic concentration where establishment or strengthening of the dominant or monopoly position of a market entity or group of persons and (or) restriction of competition is possible, if participants to economic concentration prove that the positive effect of the transaction could exceed negative consequences in the commodity market where economic concentration was implemented.

However, this option was removed by the new Amendments. Therefore, it appears that under the new law the Agency's consent may not be granted in case of establishment or strengthening of the dominant or monopoly position even where clear positive effect of a transaction could be proven.

We believe this rule gave dominant market participants the opportunity, provided the economic concentration had beneficial effects and mitigated the adverse consequences, to develop their businesses, fairly increase their market share, and establish major companies in Kazakhstan capable of competing not only in the Single Economic Space (SES), but also in the WTO. It could, therefore, be sensible to provide this rule in the Model Law or the Antimonopoly Code, which is to be adopted during the next few years.

Petition review periods

The Law requires the Agency to verify that all materials have been submitted and notify the petitioner in written form whether a petition for consent to economic concentration has been accepted for review on the merits or rejected within 10 calendar days of receiving the petition (1st stage). The following stage of review of the petition is consideration of the merits within no



more than 50 calendar days. This period established by the Law is excessively long for most investment projects. In the Russian Federation and Belarus the review period is 30 days.

In addition to the already protracted review period established by law, in practice nowadays reviews take even longer. If the petition is not accepted on the first try, a petitioner must correct errors and submit once again. After errors (which may be minor and of a technical nature) are corrected and the petition re-filed, the 10-day preliminary review period starts again.

Moreover, in practice, once a petition has been accepted for review on its merits, the Agency suspends the review pending inquiries with the Department of Justice and other state bodies. As a result, even if the

Agency does not request additional information, the actual period needed for review on the merits (2nd stage) is usually delayed to 70-75 days.

To improve this situation, the Agency could verify the full set of materials has been presented at the time of filing, using the same operating method as the Public Service Centers in Kazakhstan. To practically implement this proposal, one specialist from the economic control department of Antimonopoly Authority could check all documents at filing and decide right away whether to accept a petition for review on the merits (2nd stage), or reject it.

If a gradual introduction of this proposal is required, the initial step could be to reduce the preliminary review period to one-to-two days, rather than 10 days.

Potential consequences for failing to obtain consent

As was stipulated earlier if the Anti-Monopoly Agency's consent was not obtained in circumstances when consent should have been obtained, then the potential consequences are as follows:

- Invalidation
- Administrative Penalty



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Kazakhstan's Civil Procedure Law: Brief Overview of the Current System and New and Proposed Developments

Amendments to Kazakhstan's civil procedure law in 2012 were aimed at marrying civil procedure to existing practices, speeding up the delivery of justice and introducing greater transparency to court hearings. In contrast, amendments to Kazakhstan's civil procedure law in 2013 cannot be viewed as major reforms as they primarily aim to clarify existing provisions of the law.

Below we briefly describe the existing system for resolving economic disputes in Kazakh courts and explore new and proposed developments to Kazakhstan law generally, including certain amendments to civil procedure law.

Overview of the current system

Specialized interdistrict economic courts have jurisdiction to hear economic cases concerning property and non-property disputes between legal entities, individuals carrying out entrepreneurial activity without establishing a legal entity, and corporate disputes.

A matter is heard initially in the court of first instance, i.e., a specialized interdistrict economic court with one judge presiding. The matter may then be appealed to the appellate panel of the city or regional court (again, with one judge hearing the case) and then appealed further to be heard by a cassation panel of the same court with at least three judges hearing the case. Thus, a two-tier court system exists at the regional court level (or city court level in the case of Astana and Almaty): appeals courts for challenging judicial acts of specialized interdistrict economic courts which have not yet entered legal force and cassation courts for re-examining judicial acts which have entered legal force.

Under the current system, a decision of the court of first instance becomes effective within 15 days from the day the decision is delivered to the parties. The court of appeal's decision becomes effective once it is published and it can be appealed to the cassation panel within six months from the date of publication of the appeal court's decision. Cassation proceedings are an independent stage of the judicial process, essentially involving a review of the

lawfulness of judicial acts after their examination at appeals level. The cassation panel should consider the case within one month. The cassation panel's decision is effective when published, although the parties may file a petition with the Supreme Court's supervisory panel.

The Supreme Court has discretion whether or not to hear the matter. Thus, only if the case is heard by the cassation panel is it possible to refer a matter to the Supreme Court as the highest supervisory instance. Kazakhstan's civil procedure law also provides for plenary sessions of the Supreme Court, i.e., when the court gathers as an entire bench, to review decisions of its supervisory panels. Such plenary sessions are held upon application filed by the Chairman of the Supreme Court or the Prosecutor General. At least two thirds of the members of the Supreme Court must participate in the plenary session for it to have a quorum.

Brief description of the amendments to the Civil Procedure Code

As stated above, only minor changes have been introduced to the Civil Procedure Code in 2013. Below we briefly describe the most interesting.

- The 2013 amendments concern the issue of access to justice by providing free legal aid to those persons entitled under the Civil Procedure Code. Under the revised Code, courts are no longer entitled to consider the financial status of persons applying for free legal aid. Up till now, the courts could grant a partial or full relief to the deserving applicant. The amendments provide that the court should fully relieve the person from paying costs of legal aid and disbursements concerning representation of his / her interests in court.
- The other change concerns freezing orders. Now seizures as security for a claim cannot be imposed on pension



contributions, mandatory pension contributions, and pension assets and savings.

- The 2013 amendments have clarified the procedure for appealing awards of courts of referees. Further, the right to appeal an award within 30 days now runs from the day of receiving a copy of the award. Before the amendments entered legal force, the thirty-day period started to run from the moment a party had notice of the existence of grounds for appealing the award.
- A new Article 317-16 has been introduced to the Civil Procedure Code, which provides that execution of a judicial act concerning deportation of a foreign or stateless person out of Kazakhstan should be suspended in the event an appeal is filed with a higher court.

Proposed legislative changes

During the opening of the third session of Parliament on 2 September 2013, the President of Kazakhstan identified five key objectives at which recent legislative reforms should aim (i) stable economic growth, (ii) innovation, (iii) social security, (iv) modernization of law enforcement, and (v) ratification of intergovernmental treaties entered into between Kazakhstan and foreign states.

Below we briefly describe the most interesting and important reforms that are likely to take place in Kazakhstan in the near future.

- As Astana, Kazakhstan's capital, was chosen by the International Exhibitions Bureau as the venue to host EXPO-2017 focusing on 'Future Energy', a draft law concerning EXPO-2017 will soon be introduced to the Parliament of Kazakhstan for expedited consideration. It is expected that the law will be passed in the first quarter of 2014. The law will primarily be directed at establishing a "green" economy in Kazakhstan.
- Subsoil use law is likely to be changed. The Committee for Geology and Subsoil Use of the Ministry of Industry and New Technology has already prepared draft

legislation. In particular, it is anticipated that the amendments will simplify the procedure for obtaining subsoil use rights and, in particular, make provisions concerning exploration of subsoil more favourable to investors. The draft law also strives to simplify the provision of geological information.

- Other major changes concern law enforcement in Kazakhstan. It is anticipated that amendments will be introduced to the Criminal Code, Criminal Procedure Code, Criminal Enforcement Code and Code on Administrative Violations. As stated by the authors of the amendments, the amended legislation will aim to strike the right balance between decriminalization (humanization) of certain crimes and zero tolerance to violations of rights and reinforcement of the people's rights and freedoms. For instance, it is likely that a new institute of probation will be introduced to the existing system of criminal enforcement in Kazakhstan.
- A draft law on rehabilitation and bankruptcy has been developed to remove the trend towards liquidation of legal entities rather than their rehabilitation. Further, it is anticipated that external supervision will be abolished, leaving three procedures in the legislation: (i) accelerated rehabilitation, (ii) full scope rehabilitation and (iii) bankruptcy/liquidation. Also, the draft law provides for an additional obligation on the debtor to furnish information and documents concerning, among others, reasons for financial difficulty and past transactions.



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Kanat heads the firm's tax and customs practice in Kazakhstan, which provides a wide range of local and international tax advice and represents clients in tax and customs litigation. He is one of the leading dispute resolution lawyers in Kazakhstan, having successfully represented national and multinational companies in more than 400 disputes over the past 11 years. He is also active in corporate matters with excellent expertise in the creation of joint ventures with foreign investors in Kazakhstan.



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List of Agreements on Stimulation and Mutual Protection of Investments

No.	Counterparty, Venue and Date	Document of the Republic of Kazakhstan regarding Joining / Approval / Ratification or other Information
1.	Kingdom of the Netherlands, The Hague, November 27, 2002	RK Law No. 250-III dated May 8, 2007
2	State of Kuwait, El-Kuwait, August 31, 1997	RK Law No. 36-II dated February 22, 2000
3	Czech Republic, Prague, October 8, 1996	RK Law No. 119-I dated June 11, 1997
4	Republic of Estonia, Tallinn, April 20, 2011	RK Government Resolution No. 423 dated April 18, 2011
5	Republic of Romania, Astana, March 2, 2010	RK Law No. 119-V dated July 2, 2013
6	Republic of Austria, Vienna, January 12, 2010	RK Law No. 41-V dated October 17, 2012
7	Socialist Republic of Vietnam, Astana, September 15, 2009	Draft law on ratification being considered
8	Qatar, Astana, March 4, 2008	Draft law on ratification being considered
9	Slovak Republic, Bratislava, November 21, 2007	Draft law on ratification being considered
10	Republic of Finland, Astana, January 9, 2007	RK Law No. 16-IV dated January 11, 2008
11	Hashemite Kingdom of Jordan, Amman, November 29, 2006	RK Law No. 21-IV dated March 20, 2008
12	Republic of Armenia, Astana, November 6, 2006	RK Law No. 278-IV dated May 22, 2010
13	Kingdom of Sweden, Stockholm, October 25, 2004	RK Law No. 133-III dated March 17, 2006
14	Republic of Latvia, Astana, October 8, 2004	RK Law No. 132-III dated March 17, 2006
15	Islamic Republic of Pakistan, Islamabad, December 8, 2003	RK Law No. 134-III dated March 17, 2006
16	Hellenic Republic, Almaty, June 26, 2002	Draft law on ratification being considered
17	Republic of Tajikistan, Dushanbe, December 16, 1999	RK Law No. 249-II dated October 17, 2001
18	Republic of Bulgaria, Sofia, September 15, 1999	RK Law No. 202-II dated May 15, 2001
19	Russian Federation, Moscow, July 6, 1998	RK Law No. 314-I dated December 11, 1998

20	Belgium-Luxembourg Economic Union, Almaty, April 16, 1998	RK Law No. 23-II dated December 30, 1999
21	French Republic, Paris, February 3, 1998	RK Law No. 77-II dated July 5, 2000
22	Republic of Uzbekistan, Almaty, June 2, 1997	RK Government Resolution No. 1309 dated August 29, 1997
23	Kyrgyz Republic, Almaty, April 8, 1997	RK Law No. 174-I dated October 28, 1997
24	Republic of India, Delhi, December 9, 1996	RK Law No. 226-I dated May 8, 1998
25	Georgia, Tbilisi, September 17, 1996	RK Law No. 199-I dated December 5, 1997
26	Republic of Azerbaijan, Baku, September 16, 1996	RK Law No. 198-I dated December 5, 1997
27	Malaysia, Kuala Lumpur, May 27, 1996	RK Law No. 120-I dated June 11, 1997
28	Republic of Romania, Bucharest, April 25, 1996	RK Law No. 43-I dated November 22, 1996
29	Republic of Korea, Almaty, March 20, 1996	RK Law No. 45-I dated November 22, 1996
30	Islamic Republic of Iran, Almaty, January 16, 1996	RK Law No. 17-I dated July 2, 1996
31	Israel, Jerusalem, December 27, 1995	RK Law No. 22-I dated July 12, 1996
32	United Kingdom of Great Britain and Northern Ireland, London, November 23, 1995	RK Law No. 44-I dated November 22, 1996
33	Republic of Hungary, Budapest, December 7, 1994	Decree of the President of the RK No. 2276 dated May 12, 1995
34	Mongolia, Almaty, December 2, 1994	Decree of the President of the RK No. 2249 dated April 29, 1995
35	Republic of Poland, Almaty, September 21, 1994	Decree of the President of the RK No. 2277 dated May 12, 1995
36	Ukraine, Almaty, September 17, 1994	Decree of the President of the RK No. 2218 dated April 20, 1995
37	Republic of Lithuania, Almaty, September 15, 1994	Resolution of the RK Supreme Council No. 299-XIII dated February 20, 1995
38	Swiss Federal Council, Almaty, May 12, 1994	RK Law No. 228-I dated May 8, 1998
39	Arab Republic of Egypt, Cairo, February 14, 1993	Decree of the President of the RK No. 2460 dated September 15, 1995
40	People's Republic of China, Beijing, August 10, 1992	Resolution of the RK Supreme Council dated June 8, 1994

Kazakhstan Anti-Money Laundering Regulation



Money laundering (the practice of disguising the proceeds of illegal activity to make them appear lawfully received) is an increasing problem in the modern world.

Kazakhstan's authorities cooperate with the Eurasian Group on Combating Money Laundering and Financing Terrorism, the main purpose of which is to create and develop national anti-money laundering systems and combat the financing of terrorism. As a result of such cooperation, in April 2008 the Republic of Kazakhstan (RK) government established the Financial Monitoring Committee under the RK Ministry of Finance, and a special law regulating legal relations in this sphere was subsequently enacted.

Regulatory framework

The Law "On Countering the Legalisation (Laundering) of Proceeds Obtained in an Illicit Way and Financing Terrorism" (the "Anti Money Laundering Law") was officially published on 8 September 2009 and came into force six months after the date of its official publication. One of the main purposes of enacting the Anti Money Laundering Law is to create measures to prevent Kazakhstan's financial system being used to carry out money laundering or support terrorist activities.

Anti Money Laundering Law

Financial monitoring

Under the Anti Money Laundering Law, "financial monitoring" is defined as a set of arrangements that gather, process and analyze information relating to operations with money and/or other asset income from a financial monitoring target.

Targets of financial monitoring

Under the Anti Money Laundering Law, the following entities and/or individuals are subject to financial monitoring by the relevant authorized body, the RK Financial Monitoring Committee:

- Banks and organizations conducting banking operations

- Stock exchanges

- Insurance/re-insurance companies, insurance brokers

- Single Pension Fund and Voluntary Pension Saving Funds

- Professional participants of the securities markets (e.g., brokers and dealers), central depository

- Public notaries performing notary services with money and property

- Advocates and other independent legal consultants participating (on behalf of or upon the instruction of a client) in transactions with money and/or other assets relating to the following activities:

1. Purchase and sale of immovable property;
2. Money, securities and administration of other assets of a client;
3. Bank account or securities account administration;
4. Storage of funds for the creation, maintenance, function and management of a company;
5. The establishment, function and management of legal entities or formations and purchase and sale of enterprises.

- Audit companies

- Gambling industry and lottery organisations

- Postal organizations involved in money transfer operations

Transactions with money and/or other assets that are subject to financial monitoring

The Anti Money Laundering Law sets the following financial thresholds above which transactions are subject to financial monitoring:

- Receipt of gains (including via electronic means) as a result of betting or gambling activities in casinos and participation in lotteries where such amounts equal or exceed KZT 1,000,000 (approximately US\$6,666)

- The following transactions equal to or above KZT 2,000,000 (approximately US\$13,100) in value:

1. The deposit and transfer of money to a client's bank account carried out by an individual or legal entity registered or located offshore or by an individual or legal entity possessing a bank account registered offshore, as well as the transfer of the same (as a single transaction or a transaction carried out within seven consecutive days) by a client for the benefit of the above mentioned individuals and/or legal entities

2. The transfer of money abroad to a bank account opened for an anonymous person or receipt of money from abroad from a bank account opened for an anonymous person (as a single transaction or a transaction carried out within seven consecutive days)

- The following transactions equal to or above KZT 6,000,000 (approximately US\$40,000) in value:

The payment and money transfer by a client to any person on a non-repayment basis

- The following transactions equal to or above KZT 7,000,000 (approximately US\$46,666) in value:



1. The sale and purchase and exchange of cash in foreign currency through a bureau de change

2. The receipt of money by cheque or bill of exchange as a single transaction and transactions carried out within seven consecutive days

3. A money withdrawal from (or deposit in) a bank account of a client by way of a single transaction and transactions carried out within seven consecutive days

4. Transactions carried out by legal entities within three months from the date of their registration

5. The import into or export from Kazakhstan of cash, certified securities payable on demand, bills, cheques (except for the operations of the RK National Bank, banks and postal operators)

6. The payment of insurance proceeds or the receipt of an insurance premium

7. The deposit and transfer of voluntary pension payments to a Single Pension Fund and Voluntary Pension Saving Funds and pension payments from a Single Pension Fund and Voluntary Pension Saving Funds at the expense of voluntary pension payments

8. Transactions concerning the provision of services, including transactions concerning carriage and transport expedition, storage and commission, and asset management of property, excluding safe-deposit services relating to renting of safety deposit boxes

9. Sale, purchase and other transactions with precious metals, precious stones and goods therefrom

- The following transactions equal to or above KZT 30,000,000 (approximately US\$200,000) in value:

1. The sale and purchase, import into or export from Kazakhstan of goods of cultural value

2. The receipt of or granting of assets under a financial leasing contract

- The following transactions equal to or above KZT 45,000,000 (approximately US\$300,000) in value:

Transactions with securities

- The following transactions equal to or above KZT 150,000,000 (approximately US\$1,000,000) in value:

Transactions with immovable and other properties which are subject to mandatory state registration

Liability under the Administrative Code

The following penalties may be applied for relevant breaches of the Administrative Code:

1. Violation of the Anti-Money Laundering Law in respect of document record-keeping and submission of information on transactions subject to financial monitoring shall entail a fine on individuals of 100 MCI¹ (approx. US\$1,130), on official persons, individual entrepreneurs, notaries and advocates, and legal entities that are small or medium sized businesses or non-profit organisations from 200 to 220 MCI (approx. US\$2,260 to 2,490), and on legal entities which are major businesses from 350 to 400 MCI (approx. US\$3,960 to 4,525).

2. Failure to fulfil obligations relating to the development, adoption and/or fulfilment of rules for internal supervision and programs in support of it shall entail a fine on individuals in an amount of 100 MCI (approx. US\$1,130), on official persons, individual entrepreneurs, private notaries and advocates, and legal entities that are small or medium sized businesses or non-profit organisations from 220 to 250 MCI (approx. US\$2,490 to 2,828), and on legal entities which are major businesses from 800 to 900 MCI (approx. US\$9,050 to 10,183).

3. Notification by officers of financial monitoring targets of their clients and other entities regarding the information submitted to the authorized financial monitoring body shall entail a fine from 140 to 150 MCI (approx. US\$1,585 to 1,698).

Actions or non-actions envisaged in 1-3 above that are repeatedly committed within a year after the imposition of an administrative punishment shall entail a fine on individuals from 100 to 150 MCI (approx. US\$1,130 to 1,998), on officers, individual entrepreneurs, notaries and advocates, and

legal entities that are small or medium sized businesses or non-profit organisations from 250 to 300 MCI (approx. US\$2828 to 3395), and on legal entities that are major businesses from 1000 to 1200 MCI (approx. US\$11,315 to 13,575).

Actions or non-actions envisaged in 1-3 above that are committed 3 times or more within a year after the imposition of an administrative punishment shall entail a fine on individuals from 150 to 200 MCI (approx. US\$1,998 to 2,260), on officials of commodity exchanges, organizers of gambling businesses and lotteries, auditing organizations, notaries, advocates and individual entrepreneurs from 380 to 400 MCI (approx. US\$4,300 to 4,525); on commodity exchanges, organizers of gambling businesses and lotteries, auditing organizations and legal entities that are medium sized businesses or non-profit organizations from 800 to 1,000 MCI (approx. US\$9,050 to 11,315), on organizers of gambling business and lotteries, auditing organizations, legal entities that are large businesses from 1,800 to 2,000 MCI (approx. US\$20,365 to 22,630) with the suspension of a license to perform a certain type of activity for up to six months, suspension of a qualification diploma/certificate for up to six months, or suspension of a legal entity's activity for up to six months.

NB: Notaries are understood as notaries who perform notary services with money and/or other assets.

Liability under the Criminal Code

Under the RK Criminal Code, the following crimes associated with money laundering and terrorism financing can be prosecuted:

- Money laundering or laundering of other assets acquired in an illicit way
- Financing of extremism and terrorist activity

Money laundering or laundering other assets acquired in an illicit way

The commission of financial operations and other transactions with monetary funds or other assets obtained illegally (if aware of that fact), as well as the use of such funds or assets for other purposes with a view to hold their origin is punishable by a fine ranging from 500 to 1,000 MCI (approx. US\$5,650 to 11,315), imprisonment for up to three years, or imprisonment for the same period with or without a fine of up to 100 MCI. The same acts committed:

- by a group of persons through prior collusion;
- repeatedly; and/or

■ by a person using his/her official position, are punishable by a fine ranging from 700 to 1,000 MCI (approx. US\$7,920 to 11,315) or imprisonment for up to five years with or without forfeiture of property.

Acts specified above committed as follows:

- by a person authorised to perform state functions or by a person equivalent to such person where those functions are associated with the exercise of his/her duties of office;²
- by an organized group; and/or
- by a criminal community/organization or on a large scale (i.e. more than 20,000 MCI (approx. US\$ 226,275),

are punishable by a fine ranging from 1,000 to 2,000 MCI (approx. US\$11,315 to 22,625) or imprisonment from three to seven years with deprivation of the right to hold certain positions or engage in certain types of activity for up to three years.

Liability for financing extremism and terrorist activities

Financing extremism and terrorist activity is punishable by imprisonment for up to five years with forfeiture of property. The same acts committed repeatedly are punishable by imprisonment for three to eight years with forfeiture of property.



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1. Monthly Calculation Index. In 2013, one MCI is equal to KZT 1,731.

2. In this case punishment is stricter and may also include a prohibition on holding certain positions or engaging in certain types of activity for up to seven years with forfeiture of property.

Kazakhstan: Double Tax Treaties with 46 Countries

Currently Kazakhstan has a network of 46 ratified double taxation treaties with various nations that provide for discounted tax rates. The table below outlines the applicable tax rates with respect to dividends, interest, royalties and net income:

Payee resident in	Dividends (%)	Interest (%)	Royalties (%)	Net income tax (%)
Armenia	10	10	10	5
Austria	5/15	10	10	5
Azerbaijan	10	10	10	2
Belarus	15	10	15	5
Belgium	5/15	10	10	5
Bulgaria	10	10	10	10
Canada	5/15	10	10	5
China	10	10	10	5
Czech Republic	10	10	10	5
Estonia	5/15	10	15	5
Finland	5/15	10	10	5
France	5/15	10	10	5
Georgia	15	10	10	5
Germany	5/15	10	10	5
Hungary	5/15	10	10	5
India	10	10	10	10
Iran	5/15	10	10	5
Italy	5/15	10	10	5
Japan	5/15	10	10	0
Korea	5/15	10	10	5
Kyrgyzstan	10	10	10	10
Latvia	5/15	10	10	5
Lithuania	5/15	10	10	5
Luxembourg	5/15	10	10	10
Malaysia	10	10	10	10
Moldova	10/15	10	10	5
Mongolia	10	10	10	10
Netherlands	5/15	10	10	5
Norway	5/15	10	10	5
Pakistan	12.5/15	12.5	15	15
Poland	10/15	10	10	10
Romania	10	10	10	15
Russian Federation	10	10	10	10
Singapore	5/10	10	10	5
Slovakia	5/10	10	10	5
Spain	5/15	10	10	5
Sweden	5/15	10	10	5
Switzerland	5/15	10	10	5
Tajikistan	10/15	10	10	10
Turkey	10	10	10	10
Turkmenistan	10	10	10	5
UAE	5/15	10	10	5
Ukraine	5/15	10	10	5
United Kingdom	5/15	10	10	5
United States	5/15	10	10	5
Uzbekistan	10	10	10	15
<i>Tax Treaties not yet in force*</i>				
Macedonia*	5/15	10	10	5
Vietnam*	5/15	10	10	5
Croatia*	5/10	10	10	5
Kuwait*	5	10	10	0

*Kazakhstan has also signed – but not yet ratified – double taxation treaties with Macedonia, Saudi Arabia, and Vietnam, and is now in the process of negotiating treaties with Croatia, Kuwait, Slovenia, Thailand and other countries.

Please note that in certain instances there are additional conditions to meet in order for the reduced rates to apply. Therefore, in each particular instance it is necessary to consult the actual text of the treaty in question

Special Economic Zones in Kazakhstan

To bolster the development of particular regions or industries, Kazakhstan has established a number of special economic zones ("SEZs") having special legal status. Enterprises operating in SEZs enjoy preferential treatment, including exemptions from certain taxes and customs duties.

SEZs are established in various locations in Kazakhstan. Key goals of SEZs include developing specific non-primary industries by attracting investment, implementing innovative technologies in construction, infrastructure, production of finished goods and high-tech products, setting up export-oriented enterprises, launching the manufacture of novel products, attracting capital investment, as well as other goals that vary depending on the particular SEZ.

Activities of an SEZ and its participants are regulated by the following legislative acts:

- (i) Law No. 469-IV of the Republic of Kazakhstan On Special Economic Zones of 21 July 2011 ("**SEZ Law**");
- (ii) Code of the Republic of Kazakhstan On Taxes and Other Obligatory Payments to the State Budget ("**Tax Code**");
- (iii) Customs Code of the Customs Union No.17 of 27 November 2009 ("**Customs Union Code**");



(iv) Agreement On Special Economic Zones on the Territory of the Customs Union and Customs Procedure of the Free Customs Zone, St. Petersburg, 18 June 2010 ("**CU Agreement on SEZs**");

(v) Other legislation in relation to specific economic zones, such as Presidential Decree No. 645 On Creation of the Astana New City Special Economic Zone of 29 June 2001 ("**Decree on Astana SEZ**") and other regulations.

Requirements for registration of a company in a SEZ

Kazakhstan's tax legislation¹ envisages a number of requirements that should be met by a company in order to be registered in a SEZ:

- (i) A company should be registered as a taxpayer in the corresponding tax authority of a SEZ;
- (ii) A company should be deemed a participant of an SEZ in accordance with the SEZ Law;
- (iii) However, a company should not have subdivisions outside the territory of the SEZ. The SEZ Law does not prohibit foreign legal entities from applying to become SEZ participants.
- (iv) A company should comply with certain production criteria: at least 90% (70% for participants of the Park of Information Technologies SEZ) of revenues should be derived from sale of goods/services of own production, provided that such goods/services are included on the list approved by Kazakhstan's Government.

The list of activities to be performed or goods to be produced on the SEZ's territory is approved by the Kazakhstan Government for each particular SEZ.

List of SEZs and prioritized activities

Currently there are 10 SEZs established in various regions of Kazakhstan specializing in certain products or services:

(i) Astana New City SEZ:

- production of non-metallic mineral products;
- production of machinery and equipment;
- production of household electrical appliances;
- production of rubber and plastic products;
- chemical industry products;
- iron and steel industry products;
- production of electrical equipment including electrical lighting equipment;
- production of glass components for lighting;
- production of foodstuffs;
- production of pulp, paper and paperboard;
- production of furniture;
- manufacture of motor vehicles, trailers and semi-trailers;
- manufacture of railway locomotives and rolling stock;
- manufacture of air and space craft;
- production of basic pharmaceutical products and pharmaceutical preparations;
- manufacture of electronic parts;
- construction and commissioning of infrastructure, hospitals, schools, kindergartens, museums, theaters, universities and secondary schools, libraries, sports complexes and administrative and residential complexes in accordance with project estimates.

(ii) National Industrial Petrochemical Technopark SEZ:

- production of chemicals and chemical products;
- production of petrochemical products;
- construction and commissioning of facilities designed specifically for the implementation of the aforesaid activities.

(iii) Seaport Aktau SEZ:

- production of household electrical appliances;
- production of leather products;
- production of chemicals and chemical products;
- production of rubber and plastic products;
- production of other non-metallic mineral products;
- production of iron and steel products;
- production of fabricated metal products;
- production of machinery and equipment;
- production of petrochemical products;
- storage facilities and support services for the transport industry.

(iv) Park of Information Technologies SEZ:

- design, development and implementation of databases, hardware and software;
- data storage services (from 1 January 2014);
- development of information technologies based on artificial immune and neural systems;
- research and development activities in the field of information technology, telecommunications and electronics, instrumentation, renewable energy, resource and environmental management; creation and application of new materials, production, transportation and processing of oil and gas, subject to the ruling of an authorized body (from 1 January 2014);

- manufacture of word processing, copying and addressing machines, calculators, cash registers, marking machines, ticket-cash machines, other office equipment and information processing machines;
- production of radio and electronic transmitting equipment and equipment for the reception, recording and reproduction of audio and video;
- education services in the sphere of innovative technologies under programs determined by the Kazakhstan Government;
- design, development, implementation and production of new materials (including prototypes) (from 1 January 2014);
- construction and commissioning of facilities designed specifically for the implementation of the aforesaid activities.

(v) Ontustyk SEZ:

- production of finished textile products except for clothes;
- production of knitwear;
- production of clothes from textiles;
- production of silk fabrics and silk products;
- production of non-woven textile materials and its products;
- production of carpets, rugs and tapestries;
- production of cotton cellulose and its derivatives;
- production of high quality paper from raw cotton;
- production of leather products.

(vi) Burabay SEZ:

- provision of tourist services;
- construction and commissioning of tourist facilities not related to gambling.

(vii) Sary-Arka SEZ:

- metallurgical products
- production of finished metal products, except for machinery and equipment;
- production of machines and equipment for the metallurgical industry;
- production of motor vehicles, trailers and semi-trailers;
- production of computer, electronic and optical products;
- production of electrical equipment;
- production of chemicals;
- production of rubber and plastic products;
- production of building materials and non-metallic mineral products.

(viii) Khorgos Eastern Gate SEZ:

- storage facilities and support services for transport industry
- production of leather and other related products;
- production of textile;
- production of non-metallic mineral products;
- production of chemicals;
- production of finished metal products, except for machinery and equipment;
- production of machinery and equipment not included into the other categories;
- construction of buildings for exhibitions, warehouses, and administrative buildings.

(ix) Pavlodar SEZ:

- production of chemical and petrochemical products.

(x) Chemical Park Taraz SEZ (from 1 January 2014):

- Production of chemical products.

Registration of a company in an SEZ

In order to be registered in a SEZ, a company should file an application with the authorized body of the SEZ and submit a registration dossier that includes, inter alia, a feasibility study of the project compliant with the requirements of the authorized body and evidence of the company's credit history.

Tax benefits available to SEZ participants

The Tax Code describes tax benefits separately for each SEZ. Therefore tax and customs benefits may vary depending on the SEZ. In general, SEZ participants might enjoy tax benefits in respect of corporate income tax ("CIT"), value added tax ("VAT"), social tax (in the case of the Park of Information Technologies SEZ only), property tax, land tax and land rental payments. In addition to the above, import of goods to the territory of an SEZ are exempt from import customs duties and VAT on import, provided that certain criteria are met.

CIT benefits

Most activities of SEZ participants are exempt from the payment of CIT. Losses associated with such activities cannot be carried forward to future periods or offset against revenues from non-prioritized activities.

Participants of the National Industrial Petrochemical Technopark SEZ, Park of Information Technologies SEZ and Khorgos Eastern Gate SEZ are not exempt from CIT on construction activities carried out on the territory of the SEZ. Tax accounting for CIT purposes in respect of construction activities should be made separately from other activities by participants of these SEZs.

VAT benefits

Goods sold to the participants of an SEZ and completely consumed in the course of activities pursuant to the purposes of such SEZ are subject to 0% VAT. Participants of the Astana New City SEZ involved in construction and commissioning of infrastructure, hospitals, schools, educational institutions etc. may also purchase certain goods for the purposes of the aforesaid projects free of VAT.

In order to be eligible for purchase of goods without VAT, such goods should be (i) included on a list approved by the Kazakhstan Government, (ii) fully consumed for the purposes of conducting one of the prioritized activities on the SEZ's territory, and (iii) relevant supporting documents should be provided to a supplier of such goods in order to assess VAT at 0%.

Goods and services produced on the territory of a SEZ will be subject to VAT when they leave the SEZ and enter Kazakhstan, i.e. when they are sold to Kazakhstan consumers.

Other tax benefits

Participants of an SEZ are exempt from property tax, land tax and land rental payments with respect to taxable assets located on the SEZ's territory.

Participants of the Park of information Technologies SEZ are exempt from social tax, provided that the following requirements are met: (i) the period of tax benefits is limited by 5 years, (ii) labor costs comprise at least 50% of aggregate annual revenue, and (iii) more than 90% of labor costs are salaries paid to residents of the Republic of Kazakhstan.

Customs benefits

The customs regime on SEZ territories is defined by the CU Agreement on SEZs and other Kazakhstan legislation. The territory of an SEZ is deemed to be a free customs zone and, therefore, goods imported by participants SEZ's territory are not subject to customs duties and taxes, subject to compliance with the specific requirements of the SEZ. Goods imported to a SEZ are subject to a free customs zone procedure and considered as goods located outside the Customs Union.

Goods produced on the territory of an SEZ from imported goods obtain the status of Customs Union goods if such goods comply with criteria of sufficient processing. Such goods are not subject to import customs duties and import VAT when they leave the SEZ and enter Kazakhstan.

According to the CU Agreement on SEZs, sufficient processing criteria may include:

1. Processing leads to a change in the first four digits of the classification code of the goods; and
2. Fulfillment of necessary conditions and production and technological operations sufficient for recognition of goods as Customs Union goods determined by the competent authority; and/or
3. Change in the value of goods so that a percentage of raw materials or value added to final goods reaches a certain level defined by the SEZ regulation.



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Employment Law Tips from Dentons

1. Employment contracts must include the provisions required by the RK Labor Code.
2. The minimum salary cannot be lower than the statutory minimum monthly salary in RK law (in certain sectors minimum salary standards apply). The current statutory minimum monthly salary is 18,660 tenge, while minimum salary standards range from 1.6 to 2.0 times the statutory minimum monthly salary, depending on sector. Annual paid vacation must be at least 24 calendar days. Normal working hours for employees working in normal conditions cannot exceed 40 hours per week.
3. An employment contract cannot be concluded for a period of less than one year, except in cases provided by RK law. Upon renewal of an employment contract with an employee, the contract is deemed permanent. The employment contract with the CEO of a legal entity is concluded for the term established by the constitutive documents of the legal entity or agreement of the parties.
4. An employer can only terminate an employment contract on the grounds provided for in the RK labor law. At the same time, an employer may terminate an employment contract at any time, subject to severance compensation for the employee in the amount of at least a year's average salary. The size of the compensation must be specified in the employment contract.
5. Employment contracts with members of the executive authority may be terminated at any time on the basis of a decision of the owner of the employer, or the employer's authorized body on early termination of employment relations. In this case the employee is paid compensation in accordance with his/her employment contract.
6. Upon termination of an employment contract due to a reduction in the workforce, the employer must give at least two months notice of the termination to the employment authority, and exactly one month's notice to employee, unless otherwise specified in the employment contract. In practice there have been cases in which RK courts have reinstated employees if the employer gave more than one month's notice (for example, one month and one day), or before the date stated in the employment contract.
7. An employment contract cannot be terminated during temporary incapacity or while the employee is on annual paid leave.
8. Upon termination of an employment contract, in addition to the other payments provided for in the employment contract and/or by agreement of the parties, the employee must be compensated for unused annual paid leave, and paid any salary due at the time of termination of the agreement.
9. At hiring, the employee cannot establish a probationary period for: (i) persons filling positions on a competitive basis; (ii) persons graduating from further or higher education and being hired for the first time in their specialty, but not later than one year from the date of graduation; or (iii) invalids.
10. The employer must draw up and approve the following provisions governing work: corporate code of conduct, employee personal data protection regulations, health and safety logbook and instructions.
11. The employer has the right to not conclude a collective bargaining agreement with employees, except in cases where employees propose concluding a collective bargaining agreement.
12. The transfer of an employee from one legal entity to another requires the termination of the employment contract with the former employer and the conclusion of a contract with the new employer. If the event of a change of ownership or reorganization of the employer, the employment relations with the employees are unaffected.
13. The material liability of employees for damage caused is limited to the employee's average monthly salary, unless an agreement on full material liability has been concluded with the employee and the employee's position is specified in an act of the employer or a collective bargaining agreement as presuming full material liability.
14. The head of the employer's executive body can only take a paid position with another organization with the permission of the employer's authorized body, or the employer's owner, or its authorized person. At the same time, the head of the executive body of a joint stock company does not have the right to hold the position of head of the executive body with other organizations.
15. The employee has the right to apply to the employment dispute authorities (mediation commissions and courts) for reinstatement within three months of the date a copy of the order terminating the employment contract is received. In other employment disputes, the employee and/or employer have the right to apply to the employment dispute authorities within one year from the date they learned or should have learned of the violation of their rights.
16. The employer must provide information on the hiring or the termination of employment contracts with persons who are not local residents to the migration authority within one month of hiring or terminating such employment relations.

Intellectual Property Treaties to Which the Republic of Kazakhstan is a Party

Group of Treaties	Treaties	Entry into Force	Intellectual Property Covered
General	World Intellectual Property Organisation (WIPO) Convention	December 25, 1991/Declaration of continued application – February 16, 1993	The constituent instrument of the World Intellectual Property Organisation
IP Protection <i>This group of treaties defines the internationally agreed basic standards of intellectual property protection in each country.</i>	Berne Convention for the Protection of Literary and Artistic Works, 1886	April 12, 1999	Copyright objects
	Nairobi Treaty on the Protection of the Olympic Symbol, 1981	March 9, 2011	Olympic symbol
	Paris Convention for the Protection of Industrial Property, 1883	December 25, 1991/Declaration of continued application – February 16, 1993	Inventions, industrial designs, utility models, marks, trade names (designations under which an industrial or commercial activity is carried out), geographical indications (indications of source and appellations of origin) and the repression of unfair competition
	Patent Law Treaty, 2000	October 19, 2011	Inventions
	Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms, 1971	August 3, 2001	Related rights objects, namely phonograms
	Trademark Law Treaty, 1994	November 7, 2002	Trademarks
	WIPO Copyright Treaty, 1996	November 12, 2004	Copyright objects
	WIPO Performances and Phonograms Treaty, 1996	November 12, 2004	Related rights objects, namely phonograms and performances
	Singapore Treaty on Trademark Law, 2006	September 5, 2012	Trademarks

Global Protection System <i>This group of treaties ensures that one international registration or filing will have effect in any of the relevant signatory states. The services provided by WIPO under these treaties simplify and reduce the cost of making individual applications or filings in all countries in which protection is sought for a given intellectual property right.</i>	Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977	April 24, 2002	Inventions
	Madrid Agreement Concerning the International Registration of Marks, 1891	December 25, 1991/Declaration of continued application – February 16, 1993	Trademarks
	Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989	December 8, 2010	Trademarks
	Patent Cooperation Treaty, 1970	December 25, 1991/Declaration of continued application – February 16, 1993	Inventions
	Eurasian Patent Convention, 1994	November 5, 1995	Inventions
Classification Conventions <i>This group of treaties consists of classification treaties which create classification systems that organise information concerning inventions, trademarks and industrial designs into indexed, manageable structures for easy retrieval.</i>	Locarno Agreement Establishing an International Classification for Industrial Designs, 1968	November 7, 2002	Industrial Designs
	Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957	April 24, 2002	Trademarks
	Strasbourg Agreement Concerning the International Patent Classification, 1971	January 24, 2003	Inventions

The Law on the National Chamber of Entrepreneurs in the Republic of Kazakhstan

On 4 July 2013, the President of the Republic of Kazakhstan signed the Law on the National Chamber of Entrepreneurs of the Republic of Kazakhstan (the "**Law**"). The Law came into force on 21 July 2013.

The Law regulates public relations arising in connection with the creation and activity of the National Chamber of Entrepreneurs of the Republic of Kazakhstan and in the development of business in Kazakhstan.

National Chamber of Entrepreneurs

According to the Law, the National Chamber of Entrepreneurs of the Republic of Kazakhstan (the "**National Chamber**") is a non-commercial, self-regulated organization in the form of a union of business entities, which is created to provide significant legal, economic and social opportunities for business initiatives and the development of a mutually profitable partnership between the business community and Kazakhstan state authorities. The National Chamber also aims to encourage and support the activity of the associations of individual entrepreneurs and/or legal entities in the form of associations/unions.

Membership

Under article 4.2 of the Law, the National Chamber is created based on the principle of mandatory membership of businesses registered under Kazakhstan law (except for businesses which are obliged by law to be members of other non-commercial organizations). Under the Law, businesses include commercial legal entities, individual entrepreneurs and peasant farm enterprises registered under Kazakhstan law and performing business activities on Kazakhstan territory.

Obligatory membership fees

Amounts for membership fees are to be approved by the National Chamber's Convention annually by 1 July and published in the media. To determine the membership fee amount, businesses are subdivided as follows:

- businesses with a total annual revenue of under 60,000 MCI¹ (approximately US\$678,000) for the preceding reporting year. These legal entities are exempt from paying membership fees for the first 5 years starting from 1 January 2014;
- businesses with a total annual revenue of more than 60,000 MCI (approximately US\$678,000) but less than 1,500,000 MCI (approximately US\$16,950,000) for the preceding reporting year; and
- businesses with a total annual revenue of more than 1,500,000 MCIs (approximately US\$16,950,000) for the preceding reporting year.²

Business entities must pay membership fees annually before 31 December starting from 1 January 2014.

According to the Republic of Kazakhstan Law No. 130-V on Introduction of Amendments to Certain Legal Acts of the Republic of Kazakhstan Related to Issues of the National Chamber of Entrepreneurs of the Republic of Kazakhstan of 4 July 2013, starting from 1 January 2014, tax authorities will be obliged at the request of the National Chamber to provide annually the names of individual entrepreneurs and legal entities and the identification numbers of business entities and their total annual revenue in relation to the above thresholds set out by the Law.

On 9 September 2013, a joint decision of the RK Government and the Soiuz Atameken National Economic Chamber of

Kazakhstan on the creation of the National Chamber was signed. Following execution of the above document, the first organizational meeting of the National Chamber was held. During this meeting the Chairman of the Presidium, the Chairman of the Management Board and the members of the Management Board of the National Chamber were elected.



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Almas has over 16 years of experience advising clients in the oil and gas industry in Kazakhstan. He regularly advises clients on upstream exploration and production transactions, including drafting and negotiating host government contracts and joint operating agreements. He also has broad experience in mergers and acquisitions.



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1. MCI refers to the monthly calculated index in accordance with Kazakhstan Law, which currently equals KZT 1,731 (approx. US\$11.30).

2. The levels of fees are expected not to exceed 160 MCI (approx. US\$1,800) in the case of businesses with revenues of 60,000 to 1,500,000 MCI, and 4,000 MCI (approx. US\$45,200) in the case of businesses with revenues in excess of 1,500,000 MCI. However, these ceilings have not yet been officially approved.

Public Use of Music in Bars, Restaurants, Cafes and Hotels

It goes without saying that playing music in restaurants, bars, cafes and hotels is often deemed essential to the creation of a suitably attractive atmosphere.

Such music is protected by copyright and its performance is subject to related rights under the provisions of RK Law No. 6-І “On Copyright and Related Rights” of 10 June 1996 (the “**Copyright Law**”).

As music users, all restaurants, bars, cafes and hotels which operate in Kazakhstan are required to pay remuneration for public use of music on their premises under license agreements concluded with collective management organizations.

Music as a copyrighted item

When a person (the “**author**”) creates a poem and/or musical composition, he/she is therefore the holder of that work and is free to decide how it is used. The author controls the destiny of the work, and copyright is the legal protection extended to the original work’s author. Copyright contains two sets of rights: economic rights (rights of reproduction, broadcasting, public performance, translation, public display, distribution, alteration and so on) and moral rights (the right to be recognized as the author of the created work; the right of integrity; and the right to object to any modification of the work that may be prejudicial to the author’s honor or reputation). Economic and moral rights both belong to the author who can choose how to exercise them. The author may use the work himself/herself, grant permission to someone else to use the work or prohibit someone else from using the work. The main principle of the Copyright Law is that copyrighted items cannot be used without the author’s permission.

Article 7 of the Copyright Law identifies musical compositions with or without words as copyrighted items created by an author. These items are granted protection starting from the moment they are created.

Performance of music or phonograms as items of related rights

Related rights are rights that belong to performers, phonogram producers and broadcasters in relation to their staging, performance, phonogram (sound of a performance or other sounds) and broadcast programs respectively.

Performers, phonogram producers and broadcasters assist authors in imparting their works to the public. Phonogram producers record and produce songs and music written by authors; performers play music and sing songs; and broadcasters broadcast music.

According to Article 34 of the Copyright Law, performance is a presentation of a product in a live performance or by any technical means (e.g., CD player, tape recorder). Performance of music or phonograms is also covered by related rights.

Performers and phonogram producers have the right to use the performance or phonogram in any form, including the right to receive remuneration for each type of use. Thus, performers and phonogram producers have the right to perform publicly (performance of a work by recitation, playing, dancing, or in any other manner, including through technical means, in places where there are individuals who are not family members). In this case, restaurants, bars, cafes and hotels are regarded as places where there are non-family member individuals.

Collective management organizations

Of course, authors, phonogram producers and performers are not physically able to monitor all uses of their works and cannot contact every single bar, restaurant, cafe or hotel to negotiate individual licenses and remuneration for the use of their works. Likewise, it is not practical for a user to seek permission from every author, phonogram producer and performer for the use of every item covered by copyright or related rights. This situation necessitates the use of collective management organizations acting in the interest and on behalf of rights holders.

Collective management organizations negotiate with a user and/or representative and authorize the use of items affected by copyright or related rights in return for remuneration. Collective management organizations then distribute the remuneration collected to its members (i.e., authors, phonogram producers and performers).

The Copyright Law permits the establishment of collective management organizations in particular to manage right of communication of items affected by copyright or related rights to the public by any technical means (e.g., CD player, tape recorder).

The Copyright Law establishes two types of collective management organizations which are able:

- to manage the rights to copyrighted items and items covered by related rights under agreements concluded with their holders;
- to manage the rights to copyrighted items and items covered by related rights both under agreements concluded with holders and without such agreements.

Collective management organizations which manage holders’ rights to copyrighted items and items covered by related rights without agreements must obtain a certificate of accreditation issued by the Committee of Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan (the “Committee”). It should be noted that, under the Copyright Law, accreditation is voluntary.

A list of all accredited collective management organizations is available on the Committee’s official website at <http://intellkaz.kz/>:

1. “Amanat” Non-commercial Organization for the Protection of Copyright and Related Rights Private Enterprise (www.kazamanat.kz);
2. “Union of Songwriters” Republican Public Association (www.roo-sap.kz);

3. "Abyroi" Authors' Society Republican Public Association (www.abroy.kz);

4. "Kazakhstan Society on Collective Management of Rights of Performers" Republican Public Association (www.koupi.kz);

5. "Kazakhstan Authors' Society" Republican Public Association (www.kazak.kz);

6. "Association of Producers of Phonograms" Association of Legal Entities (www.apf.kz).

Remuneration for public use of music

Based on the above, it could be argued that, under the provisions of the Copyright Law, public use (performance) of music in restaurants, bars, cafes and hotels should be allowed without consent of rights holders but with payment of remuneration to them. This payment should be charged by the collective management organization which manages the rights of the author, phonogram producer or performer on a collective basis. Users of copyrighted items and/or items affected by related rights should provide organizations precise information on the number of performances or phonograms for a certain period of time.

Legislation¹ establishes the minimum remuneration rates which must be paid to performers and phonogram producers. The remuneration amount as well as the procedure and terms of payment should be established by the parties in the relevant license agreement with the collective management organization (Article 45 of the Copyright Law).

Liability for illegal use of copyrighted items and/or items affected by related rights

In the event of unauthorized use of copyrighted items and/or items affected by related rights, there is a risk that in the course of a state audit the restaurant, bar, cafe or hotel and/or its officials may be brought to administrative liability for illegal use of copyrighted items and/or items affected by related rights under Article 129 of RK Code "On Administrative Violations" of 30 January 2001 No. 155-II (the "Administrative Code"). In addition, a company's officials may be held criminally

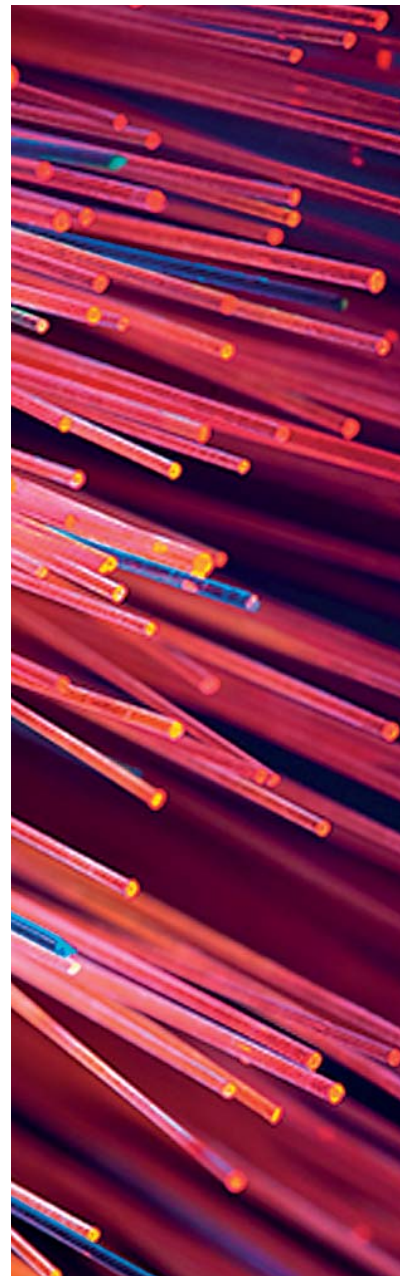
liable under Article 184 of RK Criminal Code No. 167-I of 16 July 1997 (the "Criminal Code").

Thus, under Article 129.1 of the Administrative Code, illegal use of copyrighted items and/or items affected by related rights (if these actions do not contain criminal offense elements) is punishable by a fine in the amount up to 100-150 MCI (approx. US\$1,200-1,800) with confiscation of copies of the copyrighted items and/or items covered by related rights, as well as the items which were the instruments of the offense.

Article 184.2 of the Criminal Code provides for liability for illegal use on a significantly large scale of copyrighted items and/or items covered by related rights. In this case illegal use is punishable by a fine of 500-700 MCI (approx. US\$5,800-8,000), community service for a period of 180-240 hours, or imprisonment for up to 1 year.

Summation

Authors of musical compositions with or without words, performers, phonogram producers and other such talented individuals are among a society's most valuable assets. In order to support their talent and stimulate their creativity, we must offer these individuals financial incentives to see through their potential. Remuneration in return for permission to use their works is an essential aspect of this.



1. Resolution No. 1373 of the RK Government of 23 November 2011 "On Approval of Minimum Rates of Remuneration which shall be paid to the Performers and Producers of Phonograms".



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Energy Efficiency – New Challenges for Companies Consuming Energy Resources



A new Energy Efficiency Law¹ came into force on 27 July 2012 (apart from certain provisions which entry into force was delayed, as discussed below). The Energy Efficiency Law replaced the 1997 Law on Energy Conservation. As result, the requirements for businesses relating to energy conservation and energy efficiency were considerably toughened.

Simultaneously, amendments and additions related to energy conservation and improving energy efficiency were introduced in to a number of codes and laws.² Amendments were introduced, inter alia, to the Code on Administrative Violation, the Tax Code, the Law on Architecture, Urban Planning and Construction and the Law on Subsurface and Subsurface Use. A number of subordinate legislative acts were also adopted to implement the requirements of the Energy Efficiency Law.

Regulatory framework

The RK Ministry of Energy and New Technologies ("MINT") is the authorized body that implements state policy in the area of energy conservation and energy efficiency. MINT is responsible, inter alia, for development and maintenance of the State Power Register (see below) and control over compliance with the requirements of the Energy Efficiency Law.

The Energy Efficiency Law also envisages authorities of other state bodies in implementing legislative requirements on energy conservation and efficiency. These state bodies include the Construction Committee of the Ministry of Regional Development, the Committee of Technical Regulation and Metrology of MINT and local executive bodies of different levels.

State Power Register

One of the main novelties of the Energy Efficiency Law is formation of a state power register (the "State Power Register"), which contains information on:

- private entrepreneurs and legal entities which consume energy resources (i.e. natural or artificial carriers of energy as well as various types of energy such as nuclear energy, electric power and others) in the amount equivalent to 1,500 conditional tons year;
- state organizations; and
- state enterprises, legal entities in which the state is a participant or shareholder, including national management holdings and national companies as well as other legal entities affiliated therewith (collectively referred to as "quasi-public entities" by the Energy Efficiency Law).

According to Governmental Decree No. 85, dated 5 February 2013, Kazakhenergoexpertise JSC is appointed as an operator of the State Power Register ("Operator"). The list of the entities included in the State Power Register is available at the Operator's website. The Operator's website also provides for a calculator which helps enterprises to count consumption of energy resources in conditional tons.

The entities which are included into the State Power Register must:

- develop, implement and maintain an energy management system ("EMS") in accordance with the international standards (effective as of 1 January 2014);

1. Law on Energy Conservation and Improving of Energy Efficiency, dated 13 January 2012, as amended (the "Energy Efficiency Law").

2. Law on Introducing Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Energy Conservation and Improving of Energy Efficiency, dated 13 January 2012, as amended (the "Energy Efficiency Amendments Law"), effective from 27 July 2012, apart from certain provisions which entry into force was delayed.

- undergo an energy audit within 3 years from the effective date of the Energy Efficiency Law (i.e. by July 2015);

- therefore, undergo an energy audit every 5 years;

- ensure an annual decrease in consumption of energy resources per unit of product or per unit of area of a building/facility to achieve the values defined by an energy audit.

The requirements for a mandatory energy audit and decrease of energy consumption do not apply to state organizations.

Energy Management System

According to the amendments to the Code on Administrative Violations, administrative liability is envisaged for failure of the companies to fulfill the requirement on development and maintenance of the EMS. Effective from 1 January 2014, the entities³ constituting 'large scale' entities will be subject to administrative fines in the amount up to 400 monthly calculation indices ("MCIs").⁴ However, the Energy Efficiency Law does not specify particular international standard to be followed for the EMS and does not indicate any particular criteria to verify whether such EMS is successfully developed and implemented by a company.

Energy audit

As stated above, entities included in the State Power Register (apart from state organisations) must fulfil the requirement on mandatory energy audit.

The Law imposes special requirements with respect to entities which may conduct energy audits. An audit can only be conducted by companies which are accredited by the Commission on Accreditation in the Area of Energy Saving

and Energy Efficiency (established by MINT). Energy audits will be conducted at the expense of the company requesting the audit. As a result of the audit the auditor must issue a conclusion, and based on this conclusion the company must prepare a plan of action with regard to energy conservation and improving energy efficiency. The guidelines for content of such plan were approved by Governmental Decree No. 1118 dated 31 August 2012. Evasion from the mandatory energy audit or impeding such audit also entails an administrative fine in the amount of up to 400 MCIs (for the entities constituting 'large scale' entities).

Requirements to buildings, facilities and constructions

The Energy Efficiency Law also establishes a number of requirements with respect to buildings, facilities and constructions ("Constructions").

All new designed Constructions must comply with the requirements on energy saving and efficiency. In particular, constructions consuming energy resources must be equipped with devices for measuring of energy resources and automatic systems for regulation of heating. The exemption is made for Constructions with average hourly consumption of heat energy less than 50 kW.

Constructions must be classified according to their energy efficiency. There are ten energy efficiency classes.⁵ An initiator of the construction process must indicate in its request for development of design document the requested energy efficiency class for the Construction. Upon completion of the construction, energy efficiency class must be indicated in the Construction's technical passport (i.e. the document indicating technical characteristics of the Construction). The energy efficiency

classes on existing Constructions must be established during energy audits and also indicated in the technical passports.

Further, the Energy Efficiency Law provides for mandatory review by experts in energy saving and energy efficiency for certain types of Constructions. In particular, it is mandatory for the pre-design and/or design documentation for construction and expansion of Constructions which will consume 500 and more tons of conditional fuel during a calendar year. The main aim of such review is to verify compliance of the pre-design and/or design documentation for the Constructions with the legislative requirements on energy efficiency and energy conservation. Such reviews may be conducted by companies accredited by the specially established (by MINT) Commission on Accreditation in the Area of Energy Saving and Energy Efficiency.

Limits for consumption of energy resources

The Energy Efficiency Law imposes on legal entities and private entrepreneurs an obligation to comply with the limits of energy consumption. The limits for consumption of energy resources are established by Governmental Decree No. 1346 dated 12 October 2013. Further, by the amendments to the Code on Administrative Violations, administrative liability is envisaged for exceeding the limits of energy consumption. This violation is subject to an administrative fine equal to 15 % of cost of energy resources used in excess of the approved limits for the period when a violation took place (but not more than 1 year).

It should be noted that the Energy Efficiency Law does not specify a procedure for verification of actual consumption of energy.

3. According to the classification of business entities established by the RK Law on Private Entrepreneurship dated 31 January 2006, as amended.

4. One MCI is equal to 1,731 tenge as of 1 January 2013.

5. Rules on Defining and Re-assessment of Energy Efficiency Classes, approved by Government Decree No. 1117 dated 31 August 2012.

Agreements on energy conservation and efficiency

The Energy Efficiency Law also envisages that agreements on energy conservation and improving of energy efficiency ("Energy Efficiency Agreement") may be executed on a voluntary basis by entities which are included in the State Power Register, and which consume energy resources in the amount of 100,000 conditional tons and more per year. Such Energy Efficiency Agreement, if executed, would be concluded between MINT, a local executive body and the relevant entity. The main purpose of the Energy Efficiency Agreement would be acceptance by an entity of an obligation to reduce consumption of energy

resources by not less than 25% over a 5 years period.

According to the amendments to the Tax Code, the representative bodies (maslikhats) shall have the right not to increase rates of payment for emissions generated by facilities covered by an Energy Efficiency Agreement.⁶

Gas Utilization Programs

According to the amendments to the Law on Subsurface and Subsurface Use, article 85.6 of the said Law shall be excluded as of 1 January 2015. Pursuant to article 85.6 of the on Law on Subsurface and Subsurface Use, limitations on flaring of associated

and/or natural gas shall not apply to subsurface users carrying out petroleum operations under subsurface use contracts concluded before 1 December 2004, until expiration of the periods set for implementation of the gas utilization programs if such were approved by/ agreed with the state authority by 1 December 2004 or approved by the competent authority and the authorised body in the area of environmental protection by 1 July 2006.

Based on this, the intent is to eliminate any grounds for associated gas flaring except for the cases explicitly allowed under the law.

6. The general rule is that local representative bodies (maslikhats) have right to increase payment rates for the emissions established by the Tax Code (article 495.9 of the Tax Code). Twofold increase can apply to all types of emissions apart from the emissions to air resulting from flaring of associated gas. Emissions of pollutants into air resulting from flaring of associated gas may be subject to twenty fold increases of payment rates.



Dina Berkaliyeva
Senior Associate

Dina has broad experience advising clients on various issues of Kazakhstan law, with an emphasis on matters related to mining and natural resources, environmental protection, regulatory compliance and construction.

The Following is a List of Conventions Entered into by the Republic of Kazakhstan Relating to the Protection of the Environment:

No.	Name, Venue and Date	Document of the Republic of Kazakhstan regarding Joining / Approval / Ratification or other Information
1.	International Convention on Civil Liability for Oil Pollution Damage (CLC 1969)	Resolution of the Cabinet of Ministers of the RK No. 244 dated March 4, 1994
2	International Convention for the Prevention of Pollution from Ships, 1973, with amendments of Protocol of 1978 (MARPOL 73/78)	Resolution of the Cabinet of Ministers of the RK No. 244 dated March 4, 1994
3	Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, November 16, 1972	Joining and ratification on July 29, 1994
4	Convention on Biological Diversity, Rio de Janeiro, June 5, 1992	Resolution of the Cabinet of Ministers of the RK No. 918 dated August 19, 1994
5	Cartagena Protocol on Biosafety for the Convention on Biological Diversity, Montreal, January 29, 2000	RK Law No. 43-IV dated June 17, 2008
6	Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques, Geneva, May 18, 1977	Resolution of the Supreme Council of the RK No. 301-XIII dated February 20, 1995
7	The United Nations Framework Convention on Climate Change, Rio de Janeiro, June 11, 1992	Decree of the President of the RK No. 2260 dated May 4, 1995
8	Kyoto Protocol for the United Nations Framework Convention on Climate Change, Kyoto, December 11, 1997	RK Law No. 144-IV dated March 26, 2009
9	The United Nations Convention to Combat Desertification, Paris, June 17, 1994	RK Law No. 149-I dated July 7, 1997
10	Vienna Convention for the Protection of the Ozone Layer, Vienna, March 22, 1985	RK Law No. 177-I dated October 30, 1997
11	Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, September 16, 1987	RK Law No. 176-I dated October 30, 1997
12	The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention), Washington, March 3, 1973	RK Law No. 372-I dated April 6, 1999
13	Convention on Environmental Impact Assessment in a Transboundary Context, Espoo (Finland), February 25, 1991	RK Law No. 86-II dated October 21, 2000
14	Convention on Long-Range Transboundary Air Pollution, Geneva, November 13, 1979	RK Law No. 89-II dated October 23, 2000
15	Convention on Transboundary Effects of Industrial Accidents, Helsinki, March 17, 1992	RK Law No. 91-II dated October 23, 2000
16	Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus (Denmark), June 25, 1998	RK Law No. 92-II dated October 23, 2000
17	Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Helsinki, March 17, 1992	RK Law No. 94-II dated October 23, 2000
18	Agreement on Co-operation in the Sphere of Ecology and Environment, Moscow, February 8, 1992	Upon signature
19	Agreement on Information Cooperation in the Area of Ecology and Environmental Protection, Moscow, 11 September 1998	Approved by RK Government Resolution No. 1104 dated August 5, 1999
20	Agreement on Cooperation in the Sphere of Ecological Monitoring, Saratov, January 13, 1999	Upon signature
21	Agreement between the Republic of Kazakhstan, Kyrgyz Republic, Republic of Uzbekistan, Republic of Tajikistan, and Turkmenistan for Cooperation in the Sphere of Joint Management, Use, and Protection of Water Resources of Intergovernmental Sources, Almaty, February 18, 1992	Upon signature
22	Agreement on Joint Efforts relating to the Aral Sea and nearby Aral Problem Solution, Ecological Improvement and Social-Economics Provision of the Aral region (Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan, Uzbekistan), Kzyl-Orda, March 26, 1993	Upon signature
23	Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Uzbekistan for the Cooperation in the Sphere of the Protection of Environment and Rational Nature Use, Almaty, June 2, 1997	Upon signature
24	Regulation on the International Fund for Saving the Aral Sea, Kzyl-Orda, March 26, 1993	Resolution of the RK Supreme Council № 2462 dated October 19, 1993
25	Agreement between the Government of the Republic of Kazakhstan, the Government of the Kyrgyz Republic, the Government of the Republic of Tajikistan, the Government of Turkmenistan and the Government of the Republic of Uzbekistan on the Status of the International Fund for Saving the Aral Sea and its institutions, Ashgabat, April 9, 1999	RK Law No. 348-IV dated November 8, 2010

26	Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Azerbaijan on Cooperation in the Sphere of Environmental Protection, Almaty, June 10, 1997	Upon signature
27	Memorandum between the Government of the Republic of Kazakhstan and the Government of the Republic of Georgia on Cooperation in the Sphere of Environmental Protection, Tbilisi, September 17, 1996	Upon signature
28	Agreement between the Government of the Republic of Kazakhstan and the Government of Israel on Cooperation in the Sphere of Environmental Protection, Jerusalem, December 27, 1995	Approved by RK Government Resolution No. 703 dated June 5, 1996
29	Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on Cooperation in the Sphere of Environmental Protection, Almaty, April 8, 1997	Upon signature
30	Agreement between the Government of the Republic of Kazakhstan and the Government of Mongolia on Cooperation in the Sphere of Environmental Protection, Almaty, March 12, 1998	Upon signature
31	Agreement between the Government of the Republic of Kazakhstan and the Government of the Russian Federation on the Joint Use and Protection of Transboundary Waters, Orenburg, August 27, 1992	Upon signature
32	Agreement between the Government of the Republic of Kazakhstan and the Government of the Russian Federation on Ecology and Nature Use on the Territory of the Baikonur Complex Under Conditions of its Lease by the Russian Federation, Baikonur, June 2, 2005	Approved by RK Government Resolution No. 1242 dated December 13, 2005
33	Agreement between the Government of the Republic of Kazakhstan and the Government of the United States of America on Cooperation in the Context of the Globe Program, Washington, March 27, 1995	Upon signature
34	Agreement between the Government of the Republic of Kazakhstan and the Government of the United States of America on Cooperation in the Sphere of Environment and Natural Resource Protection, Washington, March 27, 1995	Upon signature
35	Agreement between the Government of the Republic of Kazakhstan and the Government of the Turkish Republic on Cooperation in the Sphere of Environmental Protection, Ankara, March 4, 1997	Approved by RK Government Resolution No. 947 dated June 11, 1997
36	Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Uzbekistan on Cooperation in the Sphere of Environmental Protection and Rational Nature Use, Almaty, June 2, 1997	Upon signature
37	Agreement on the Work Conditions of the Regional Ecological Center of Central Asia, Almaty, May 12, 2000	RK Law No. 69-II dated July 5, 2000
38	Agreement between the Government of the Republic of Kazakhstan and the Executive Branch of Georgia on Cooperation in the Sphere of Ecology, Pure Automated Special Transport and its Infrastructure, Tbilisi, October 22, 1998	Approved by RK Government Resolution No. 123 dated February 15, 1999
39	Protocol on the Unified Procedure for the Application of Technical, Medical, Pharmaceutical, Sanitary, Phyto-sanitary and Ecological Standards, Norms, Rules and Requirements Regarding Goods Imported into the Member States of the Agreement on Customs Union, Moscow, January 28, 1999	Approved by RK Government Resolution No. 1716 dated November 16, 1999
40	Energy Charter Protocol on Energy Efficiency and related Environmental Aspects, Lisbon, December 17, 1994	Decree of the President of the RK No. 2537 dated October 18, 1995
41	Treaty in the Form of Exchange of Notes between the Republic of Kazakhstan, European Communities Committee, and the United Nations Development Program concerning Amendments to the Agreement on the Work Conditions of the Regional Ecological Center of Central Asia of May 12, 2000	RK Law No. 519-II dated January 9, 2004
42	The Convention on Wetlands of International Importance especially as a Waterfowl Habitat, Ramsar, February 2, 1971	RK Law No. 94-III dated December 13, 2005
43	Framework Convention on the Protection of the Marine Environment of the Caspian Sea, Tehran, November 4, 2003	RK Law No. 97-III dated December 13, 2005
44	Stockholm Convention on Persistent Organic Pollutants, Stockholm, May 22, 2001	RK Law No. 259-III dated June 7, 2007
45	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Rotterdam, September 10, 1998	RK Law No. 239-III dated March 20, 2007
46	Energy Charter Treaty, Lisbon, December 17, 1994	Decree of the President of the RK No. 2537 dated October 18, 1995
47	Agreement between the Government of the Republic of Kazakhstan and People's Republic of China on Protection of Transboundary Rivers, Beijing, February 22, 2011	RK Government Resolution No. 1114 dated September 30, 2011
48	Agreement between the Government of the Republic of Kazakhstan and the People's Republic of China on Cooperation in the Area of Environmental Protection, Astana, June 13, 2011	RK Government Resolution No. 583 dated May 7, 2012
49	Agreement between the Government of the Republic of Kazakhstan and Government of the Republic of Uzbekistan on Protection, Reproduction and Stable Development of Saiga Livestock (Saiga tatarica tatarica), Tashkent, March 17, 2010	RK Government Resolution No. 677 dated June 30, 2010

The Development of Kazakhstan's Legal Profession

Rule of Law

Having just celebrated its 20th anniversary of independence, Kazakhstan is a young country. Prior to independence, within less than a century Kazakhstan jumped from feudalism to socialism and then from socialism to capitalism. This rapid, dramatic pace of change confused and disoriented many Kazakhstanis, and prompted the country to re-examine its goals and to re-evaluate its people's values and aspirations. Nonetheless, despite these challenges, Kazakhstan benefited from this rapid, radical transformation. Independence enabled Kazakhstan to re-position itself and reconsider its principles, although this could only be done through the prism of its feudal and Soviet heritage.

Kazakhstan's Constitution proclaims the country to be firmly governed by Rule of Law (Article 1). This in itself was a huge step forward. In reality, however, this was more of a wish, a bright goal that the country hoped to achieve in the future. Much has been accomplished over the past twenty years as Kazakhstan proceeds to reorganize its legal system, creating a completely new body of law that allows the market economy to develop freely and for the defence of individual rights and freedoms – among these the right to hold private property and to operate in a competitive business climate. But this is only the beginning of a process in which society should work together so that Kazakhstan will become a country truly governed by Rule of Law.

Requirements for the Legal Profession

A well-regulated legal profession is a necessary element in the legal system to guarantee Rule of Law.

The term "profession" has been disputed by academics for the past century. In a broad sense this means "occupation", "specialty" or even "job". This definition was widely used during Soviet era and is still used in Kazakhstan today. However, historically "profession" is often used in a more narrow sense, implying an occupation requiring special training and/or skills based on theoretical knowledge. Historically, there were said to be only three "learned professions" – law, theology and medicine. More recently, the list of occupations which are recognized as 'professions' has expanded considerably.

What these three professions have in common, apart from skills and theoretical knowledge, is that professionals and their clients must be bound by trust, a basic requirement for a sound professional reputation.

A profession can only survive if it meets people's expectations and demands. As such, it is expected that practitioners of any profession, including the legal profession, should fulfill the following requirements:

- They should have skills based on theoretical knowledge and the ability to apply this knowledge to the special circumstances of each case;

- They should be registered, licensed, or admitted as professionals by one or more professional bodies;

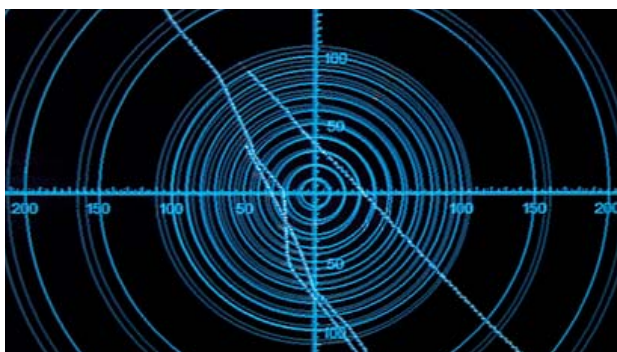
- They should be regulated by law or by their own voluntary organization with a special enforcement mechanism;

- They should adhere to special rules based on standards that are usually higher than those for non-practitioners of the profession (Code of Ethics);

- They should be required to regularly upgrade their skills and knowledge through continuing education and training.

A Short Historical Background of the Modern Legal Profession in Kazakhstan

When Kazakhstan became an independent country, the legal profession was seriously under- developed. The right to land and fixed assets as private property was almost non-existent; there was almost no market economy and therefore no need for practicing lawyers independent of the state. In 1991, when Kazakhstan proclaimed its independence, the situation suddenly changed. Young, ambitious Kazakh businessmen started their own businesses. For example, the Kazakhstan Commodity Exchange was created by a group of enthusiastic young businessmen. Many of the Exchange's founders have now become members of the government, leading policy-makers, and noted scholars and experts.



At that time, together with two other partners, I founded one of the first, if not the first, private law firm in Kazakhstan, the Zan Law Company. The Commodity Exchange became a major client that we assisted with a broad range of legal issues and where I also served as the Head Arbitrator. The first foreign investors started visiting the country, looking for business opportunities. In June 1992 our Zan Law Company organized Kazakhstan's first international conference in the United States, "Doing Business in Kazakhstan", for American and Canadian businessmen. In 1993 the first group of students sponsored by the US Government under the Muskie Program graduated from US universities. I was among the first three Kazakhstani lawyers educated abroad.

Since that time much has changed. Many talented lawyers have received high-quality legal educations both at home and abroad, and these are now Kazakhstan's most professional, competent legal practitioners. There are also many outstanding local lawyers who did not receive legal training abroad, but have still built impressive legal practices. Many well-educated lawyers are employed in-house in foreign and local companies, in government, and in nationally-owned companies. Thus twenty years of independence has resulted, among other achievements, in the formation of Kazakhstan's legal profession, which continues to develop rapidly.

A New Idea: The Kazakhstan Bar Association

Currently Kazakhstan's legal profession is subject to almost no formal regulation. Only criminal lawyers (advocates) are subject to regulation. There are many lawyers who are termed "persons providing legal services not related to advocate services". Providing these services does not require a license or special knowledge, not even a law degree. As a result, legal services can be provided by 'lawyers' with no formal legal education. As a result, the reputation of the legal profession overall suffers and judges often have to deal with untrained, unethical 'lawyers' representing clients in court. Of course there are a good number of high quality law practices operating in Kazakhstan, that provide excellent advice, and ensure that their lawyers adhere to the highest standards of professional and ethical behavior. What

has been absent to date is a recognized professional body which can admit members and, where necessary, discipline or sanction those members if they fail to abide by the standards of the profession.

We at Dentons firmly believe that the time has now come to take Kazakhstan's legal profession to 'the next level', for the country's legal profession to be better organized and regulated in order to meet new market conditions and client expectations. Dentons, along with several other leading law firms in Kazakhstan, has been instrumental in the formation of a professional law association – the Kazakhstan Bar Association (KAZBAR).

KAZBAR carefully selects its members based on their education, reputation and other credentials, and ensures that being a KAZBAR member guarantees a high degree of professionalism, education, and competency.

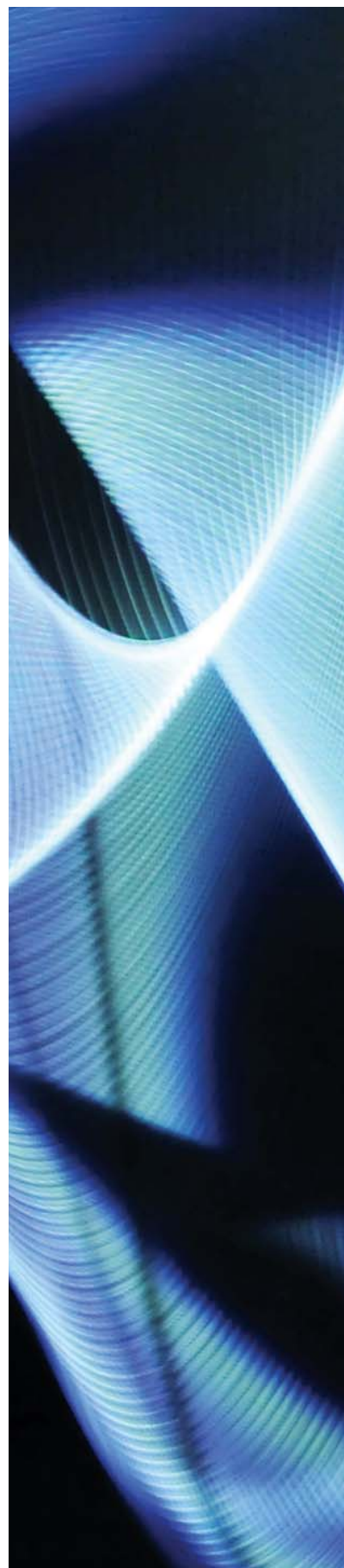
Professional Reputation

Similar to practitioners of other "learned professions" such as doctors, lawyers can provide their services only when they are trusted by the public. If a patient needs surgery, he or she obviously seeks out the best surgeon. The same holds true for lawyers. Therefore, reputation is a lawyer's most important asset. However, a lawyer's individual reputation is dependent on the general reputation of his/her country's legal profession. It is therefore in the best interests of Kazakhstan's lawyers to ensure that their peers uphold the reputation of the legal profession as rigorously as they themselves do.

Lawyers can raise their collective reputation to a high standard by combining the most important aspects of this process. KAZBAR will play a fundamental role in raising the legal profession's reputation, guaranteeing that its practitioners adhere to the highest professional standards.

Legal Education

Regrettably, the standards of legal education in Kazakhstan are not what they could be. Businesses and law firms know very well that finding a recent law school graduate with good knowledge of the law and,



importantly, the ability to apply it, is not easy. Whilst international law firms can still recruit the best candidates, the pool of talent available to businesses is widely regarded as insufficient. The closure of Adilet Law School and the Shaikenov Law Academy was a tragedy for legal education in Kazakhstan. Closing the Academy of Sciences' Institute of Philosophy and Law has had a negative impact on developing the legal fundamentals. Unfortunately there are very few committed legal scholars at work today on developing the legal system, legal theory and legal education.

On the plus side, however, KIMEP Law School is addressing some of these problems. KIMEP has created an Advisory Council composed of lawyers from leading law firms and corporations to improve the quality of the legal profession. The Council has created a legal curriculum conforming to today's legal requirements in society and in business. Other law schools and faculties might do well to follow this example.

In order to raise the standards of legal education, KAZBAR plans to introduce a system of accreditation for law schools and institutes. Accreditation means that a law degree from a given law school or institute is accepted as proof of the high standard of legal education required for admission to the KAZBAR.

KAZBAR would also require continuing legal education for practicing lawyers, as is the case in other developed countries. This means participating in and speaking at accredited professional conferences or seminars, or through attending accredited professional training courses. KAZBAR believes this will not only encourage lawyers to upgrade their professional knowledge,

but will also force academic institutions and centers to raise their academic standards.

Ethical Standards

One of KAZBAR's most important goals is adoption of a professional Code of Ethics. Development of this Code is now in process, based on best international practices by established law societies and bar associations. Although participation in the KAZBAR and acceptance of its Code of Ethics is voluntary, we believe the Code will serve as a major impetus for lawyers to join KAZBAR. Those who join will have a professional advantage because they can guarantee their services adhere to the Code of Ethics.

The need for a Code of Ethics has been discussed by lawyers and judges, including Supreme Court justices, for some time. The moment has arrived to make a reality of this Code for the legal profession.

The public must feel confident that lawyers adhere to the highest ethical standards and that a mechanism exists to enforce these standards.

Self-Regulation and External Regulation

It is recognized that to provide legal services, lawyers must possess a certain degree of autonomy. They must have the right to regulate themselves through their own professional associations. This right already exists in Kazakhstan, since the licensing system for lawyers providing 'non-advocate services' has been eliminated and no new system has been introduced. However, this is not enough. Lawyers must possess sufficient autonomy to protect their

clients (both institutional and individual) under attorney-client privilege, to avoid conflicts of interest, and to observe legal ethics in all aspects of their practice.

The Kazakhstan Bar Association intends to work closely with the Government and Parliament to create appropriate legislation to regulate Kazakhstan's legal profession so that it can better serve its clients and society at large.



Aigoul Kenjebayeva
Managing Partner

With over 35 years' experience as a practicing lawyer, Aigoul's particular areas of expertise include oil and gas and mineral resource projects, corporate/M&A, PPP/infrastructure projects, competition law, and dispute resolution.

Aigoul is consistently named as a leading expert in Kazakhstan by *Chambers Global*, *Legal 500*, *PLC Which Lawyer?*, *Who's Who Legal*, *IFLR1000*, and *Who's Who in the Republic of Kazakhstan*.



Tax Havens

- (1) The Principality of Andorra
- (2) Antigua and Barbuda
- (3) Commonwealth of the Bahamas
- (4) Republic of Barbados
- (5) Kingdom of Bahrain
- (6) State of Belize
- (7) The Sultanate of Brunei Darussalam
- (8) The Republic of Vanuatu
- (9) Cooperative Republic of Guyana
- (10) Republic of Guatemala
- (11) State of Grenada
- (12) Republic of Djibouti
- (13) The Dominican Republic
- (14) Commonwealth of Dominica
- (15) The Republic of Ireland (only with respect to the cities of Dublin and Shannon)
- (16) The Kingdom of Spain (only with respect to the Canary Islands)
- (17) The Republic of Cyprus
- (18) China (only with respect to the Special Administrative Regions of Macau and Hong Kong)
- (19) Republic of Colombia
- (20) Federal Islamic Republic of Comoros
- (21) Republic of Costa Rica
- (22) Malaysia (only with respect to the Labuan enclave)
- (23) Republic of Liberia
- (24) Republic of Lebanon
- (25) Principality of Liechtenstein
- (26) Grand Duchy of Luxembourg
- (27) Republic of Mauritius
- (28) Islamic Republic of Mauritania
- (29) The Portuguese Republic (only with respect to its Madeira Island)
- (30) Republic of Maldives
- (31) Republic of the Marshall Islands
- (32) The Principality of Monaco
- (33) Malta
- (34) Mariana Islands
- (35) The Kingdom of Morocco (only with respect to the city of Tangier)
- (36) Union of Myanmar
- (37) Republic of Nauru
- (38) Kingdom of the Netherlands (only with respect to the island of Aruba and the dependent territories Antilles islands)
- (39) Federal Republic of Nigeria
- (40) New Zealand (only with respect to the Cook and Niue islands)
- (41) United Arab Emirates (only with respect to the city of Dubai)
- (42) Republic of Palau
- (43) Republic of Panama
- (44) Independent State of Samoa
- (45) The Republic of San Marino
- (46) Republic of Seychelles
- (47) Saint Vincent and the Grenadines
- (48) Federation of St. Kitts and Nevis
- (49) State of Saint Lucia
- (50) United Kingdom of Great Britain and Northern Ireland (only with respect to the following areas):
 - a. Islands of Anguilla
 - b. Bermuda
 - c. British Virgin Islands
 - d. Gibraltar
 - e. Cayman Islands
 - f. The Island of Montserrat
 - g. Turks and Caicos Islands
 - h. Isle of Man
 - i. Channel Islands (Guernsey, Jersey, Sark, Alderney)
 - j. South Georgia Island
 - k. South Sandwich Islands
 - l. Chagos Island.
- (51) United States of America (only with respect to the following areas):
 - a. U. Virgin Islands
 - b. The island of Guam
 - c. The Commonwealth of Puerto Rico
 - d. The State of Wyoming
 - e. The State of Delaware
- (52) Republic of Suriname
- (53) United Republic of Tanzania
- (54) Kingdom of Tonga
- (55) The Republic of Trinidad and Tobago
- (56) Sovereign Democratic Republic of Fiji
- (57) Republic of the Philippines
- (58) The French Republic (only with respect to the following areas):
 - a. The Kerguelen Islands
 - b. French Polynesia
 - c. French Guiana
- (59) Republic of Montenegro
- (60) Democratic Republic of Sri Lanka
- (61) Jamaica

About Dentons

Dentons is a global firm formed by the March 2013 combination of international law firm Salans, Canadian law firm Fraser Milner Casgrain (FMC) and international law firm SNR Denton. The firm now constitutes one of the largest full service law firms situated in 75 locations spanning more than 50 countries across Africa, Asia Pacific, Canada, Europe, the CIS, the Middle East, the UK and the US, operating across borders and cultures.

Dentons Kazakhstan

Following the combination, the Almaty teams of legacy SNR Denton and Salans have joined together to form the leading and largest international law firm Dentons Kazakhstan.

Through its predecessor firms, Dentons Kazakhstan has been active in the country for more than 20 years.

With offices in Almaty and Astana totalling 6 partners and 31 lawyers, we can offer you now a greater depth of expertise. You will benefit from our enhanced capabilities across sectors, service lines and geographies:

- A larger team of lawyers allows for much deeper specialization within the office, enabling you to receive on-the-spot advice on even complex and unusual issues with little or no additional research - in a nutshell, you get even better quality and value.
- Not only are the Kazakh offices part of a reputable international law firm, but they

also fully meet Kazakh supplier of services and Kazakh content requirements, providing the benefits of both worlds.

- The combined experience of the Kazakh practice in all areas of business law is by far broader and deeper than that of any other law firm in Kazakhstan.

Clients

Our client base includes many of the world's leading multi-national private and public corporations, funds, banks, insurance companies and governmental entities. We also advise not-for-profit organizations and individuals on a wide variety of matters.

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Key Practice Areas

Corporate/M&A:

- Due diligence
- Share sale and purchase agreements, shareholders' agreements, exit arrangements
- Corporate restructuring

Energy and Natural Resources:

- Representing major petroleum and mining companies in their negotiations with the Government, governmental agencies and their domestic and/or international partners
- Providing follow-up support for all ongoing local legal needs in Kazakhstan

Banking and Finance:

- Assisting in preparation of loan agreements, including subordinated loan agreements, secured and unsecured financing, trade finance, acquisition, and real estate finance
- Preparing security documentation, including pledges of shares, pledges of chattels, assignments of receivables and other rights, mortgages, guarantees and security deeds
- Advising on raising equity and debt both from financial institutions and in capital markets

Intellectual Property

- Registration of trademarks, patents, and related licensing agreements
- Licensing agreements
- IP consultancy services
- Development and coordination of anti-counterfeiting programs
- IP litigation

Competition and Antitrust

- Representing clients in litigation before courts and in administrative proceedings before the Kazakh Antimonopoly Agency in cases of alleged violations of antitrust law
- Analyzing M&A and other transactions and actions subject to state regulation;

advising on transaction structuring

- Advising corporate clients on antitrust law compliance, including analysis of dominant position issues, concerted actions, and vertical arrangements, counteracting monopolistic activities and unfair competition practices
- Preparing commercial contracts, franchising, distribution and service agreements

Real Estate and Construction

- Real estate leasing and financial leasing
- Real estate acquisitions, including land rights and property development
- Real estate development and construction
- Structuring real estate development projects and investment optimization
- Project finance
- Litigation

PPP and Infrastructure

- Advising on concession law
- Advising on tender documentation and procurement processes
- Advising on land rights issues, construction and design regulations, permissions and licensing issues, etc.
- Advising on national and international concession contracts
- Advising on principal ancillary contracts (construction contracts, operation and maintenance contracts)
- Negotiating over concession agreements and financing
- Advising during bid and negotiation phases
- Advising bidding consortia/concessionaires, governmental bodies, lenders, and accounting firms
- Advising on a broad spectrum of infrastructure sectors (transport, social infrastructure, water treatment, power/energy)

Tax and Customs

- Advising on and implementing tax efficient business and transaction structures in various industries (industrial and consumer products manufacturing

and distribution, banking and financial services, leasing, construction, renovation and operation of commercial real estate, hotel management, telecommunications, oil and gas, sea and air transportation, and others) and jurisdictions

- Providing tax expertise on corporate/M&A projects, including tax due diligence
- Counseling on corporate, personal tax, customs and currency control issues
- Representing clients in court and administrative disputes with tax and customs authorities

Arbitration

- International commercial arbitration, both institutional and ad hoc, as counsel or arbitrator
- Investment treaty arbitration

Litigation

- Representing clients before civil courts in a variety of commercial disputes
- Judicial protection of business reputation

Employment

- Preparing employment contracts for executives and staff
- Advising on expatriate immigration and visa issues
- Advising on staff reductions, layoffs, and transfers
- Employment law compliance, health and safety issues and corporate employment audits
- Employment litigation

IT and Telecommunications

- Legal support for IT services, telecommunications and encryption
- Legal support for electronic filing and billing
- Legal protection of personal data
- Legal and tax support for development, distribution, and outsourcing of software
- Advising on licensing and media activities
- Advising on advertising issues

Complimenting our strength in Kazakhstan's market, we have recognised areas of sector expertise in which we provide a full range of domestic and international legal service to clients operating in all of the following industries:

- Banks and Financial Institutions
- Life Sciences
- Energy and Natural Resources
- Real Estate
- Information Technology
- Shipping and International Trade
- Leisure and Hospitality
- Telecommunications

Dentons offices and locations



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