November 2014

# Kazakhstan Business Updates

DENTONS

# Preface

Welcome to the 2014 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 be 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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First in Kazakhstan in:
Energy and Natural Resources
Corporate and Finance
Dispute Resolution


First in Kazakhstan in:
Energy and Natural Resources
Corporate and Finance
Dispute Resolution


First in Kazakhstan


First in Kazakhstan in:
Financial and Corporate
Energy and Infrastructure


Top listed in Kazakhstan in:
Oil and Gas law
Tax law

# 2014 marks **20 years** of Dentons in Kazakhstan

To celebrate this anniversary, the firm supported a unique Arman Alma-Ata multimedia exhibition, which was held at the end of September at the Space Multimedia Gallery.

Arman Alma-Ata is an ode to the city with its buildings and apple orchards in which people treat heritage with the respect it deserves. The displays on show include archival photographs and digital images of paintings by famous artists of Kazakhstan.

About 60 works were converted into digital format and were supplemented by graphics and comments provided by the State Archive. Projections on big screens, including animation and musical sequences, gave visitors an opportunity to immerse themselves in their favorite streets of the historic center of the city, hear the sound of water bubbling through streams and remember the city's unique apple orchards.

As part of the anniversary celebrations, Dentons held a cocktail reception for clients on September 30. Space Multimedia Gallery held a closed viewing of the Arman Alma-Ata exhibition specially for Dentons' guests, and all those present had a chance to enjoy the engaging symphony of light, sound and color. The event was well received and thoroughly enjoyed by all attendees.

Kazakhstan Managing Partner Aigoul Kenjebayeva, Warsaw office Managing Partner Arkadiusz Krasnodebski and Baku office Managing Partner James Hogan gave words of welcome to the reception guests. Two of the firm's long-standing clients, Matteo Grassani of BG and Dina Kali of Efes, congratulated Dentons on the major milestone and hoped that the Firm would continue to build on its history of leadership in the market.

"While many have contributed to our success over the years, lawyers and support staff alike, none have contributed more than our clients," said Aigoul. "We at Dentons are thankful to our many customers for making this anniversary possible. Their feedback has shaped our Firm through the years, and their faith in our ability to support them has sustained us. We look forward to continuing to serve our valued clients for many years to come."

# Eurasian Economic Union

On 29 May 2014, the presidents of Kazakhstan, Russia and Belarus signed an agreement (the "Treaty") in Astana on the Eurasian Economic Union (the "EaEU" or the "Union").

The Treaty will enter force on 1 January 2015. According to the Treaty, the Union is an international organization and its membership is open to other countries. It is expected that from 1 January 2015 Armenia will join the Union as a full member, while work is also being done to prepare Kyrgyzstan and Tajikistan to join the Union.

The Treaty is aimed at ensuring the free movement of goods, services, capital and labor, as well as a coordinated, coherent and uniform policy in a number of industries. As a result, a single market should be formed within the Union, and borders should be fully opened to economic activity.

The Treaty has been signed on the basis of other international treaties agreed mainly in 2009–2010, which established the legal framework of the Customs Union of Russia, Kazakhstan and Belarus (the "CU") and the Common Economic Space (the next stage of integration). Some of these international treaties were incorporated into the law of the Union and are applied to the extent they do not contradict the Treaty, while a number of agreements, protocols and international agreements governing various matters of the CU cease to have effect from the effective date of the Treaty. The resolutions of the Supreme Council at the level of Heads of State, the Supreme Council at the level of Heads of Governments and the Commission, in effect as of the effective date of the Treaty, also remain in force and are applied to the extent not inconsistent with the Treaty.

**We examine the most significant changes in the following areas:**

- Union's bodies
- Regulation of circulation of drugs and medical products
- Customs regulation
- Foreign trade policy
- Technical regulation
- Trade in services, establishment, operation and investments
- Regulation of financial markets
- Energy sector
- Taxes and taxation
- State procurement
- Intellectual property
- Industry
- Labor migration
- Regulation of access to rail transport
- Local content in subsurface use contracts
- Local content in procurements of Samruk-Kazyna NWF
- Some aspects of the imposition of penalties and dispute resolution

Below is a brief overview of the major changes in the areas we have mentioned.

**The Union has the following bodies:**

- Supreme Eurasian Economic Council (the "Supreme Council")
- Eurasian Intergovernmental Council (the "Intergovernmental Council")
- Eurasian Economic Commission (the "Commission" or "EEC")
- Court of the Eurasian Economic Union (the "Court of the Union")

The working language of the Union is Russian. Resolutions of the Union's bodies should be officially published on the official website of the Union.

Let us have a detailed look at the Court of the Union, a judicial authority acting on a permanent basis which, among other things, is empowered to hear disputes involving investors.

The Court of the Union began functioning as part of the CU from 2010.

Under the Treaty, the powers of the Court of the Union are more clearly defined. The Court of the Union:

1) Gives guidance with respect to the provisions of the Treaty, international agreements in the framework of the Union and resolutions of the bodies of the Union upon the application of a member State or a body of the Union, as well as at the request of employees and officials of the Union's bodies and the Court; and

2) Hears disputes arising from the implementation of the Treaty, international agreements within the framework of the Union and/or resolutions of the bodies of the Union at the request of: (a) a member State, or (b) a business entity.

**The Treaty provides a clear grading of disputes for consideration by the Court of the Union:**

1) The following disputes are considered at the request of a member State:

- Consistency of an international agreement within the framework of the Union, or its certain provisions, with the Treaty.

- The observance by another member State (other member states) of the Treaty, international agreements within the framework of the Union and/or resolutions of the Union's bodies, as well as certain provisions of the above international agreements and/or resolutions.

- The compliance of resolutions of the Commission or its certain provisions with the Treaty, international agreements within the framework of the Union and/or resolutions of the Union's bodies.

- Challenging actions (or inaction) of the Commission.

2) The following disputes are considered at the request of a business entity (which is defined as a legal entity or an individual entrepreneur registered under the laws of a member or third-party state):

- The compliance of a resolution of the Commission or its provisions which directly affect the rights and legitimate interests of the business entity concerning entrepreneurial or other economic activities with the Treaty and/or international treaties within the framework of the Union, if such resolution or its provisions entailed the infringement of rights and legitimate interests of the business entity conferred by the Treaty and/or international treaties within the framework of the Union.

- Challenging actions/non-actions of the Commission which directly affect the rights and legitimate interests of a business entity concerning entrepreneurial or other economic activities, if such actions/non-actions resulted in the infringement of rights and legitimate interests of the business entity conferred by the Treaty and/or international treaties within the framework of the Union.

Member states may also refer other disputed matters to the competence of the Court if resolution is directly provided for by the Treaty, other international agreements among member states and international treaties of the Union with third parties.

Before applying to the Court of the Union, an applicant must apply to a member state or the Commission for the pre-trial resolution of a dispute. A business entity may file an application with the Court of the Union upon payment of a fee.

The consideration period for disputes before the Court of the Union has not undergone major changes and remains up to 90 days from the date an application is filed (previously it was no more than three months from the date an application is filed). The Court issues its decision based on the results of dispute resolution and, in the event of a request for clarification, an advisory opinion. As before, an advisory opinion is advisory in nature, while the court's decision on the dispute is binding.

## Regulation of circulation of drugs and medical products

A common market of drugs and medical products (healthcare products and medical equipment) meeting the standards of the appropriate pharmaceutical practices will be created as part of the Union. It is expected that the common market for drugs and medical products


will begin functioning within the Union from 1 January 2016. For this purpose, member states shall enter into an international agreement by 1 January 2015 at the latest, which will determine the common principles and rules for the circulation of drugs and medical products.

## Customs regulation

Customs regulation in the Union will be carried out in accordance with the new (revised) Customs Code of the Union, international treaties and acts, and the provisions of the Treaty. It is expected that the new Customs Code of the Union will come into force from the beginning of 2016. Currently, active work is being undertaken on the draft code.

Pending the entry into force of the new Customs Code of the Union, customs regulations in the Union will be carried out in accordance with the Agreement on the CU Customs Code of 27 November 2009 and other international agreements of the member states governing the customs relations entered into as part of the formation of the contractual legal framework of the CU and the Common Economic Space and incorporated, under the Agreement, into the law of the Union, subject to the provisions of the Treaty.

In general, the Treaty contemplates the preservation of all existing customs privileges under the customs legislation of the CU. However, due to the signing of the Treaty, many agreements and protocols of the CU will lose their effect. It is expected that the main provisions of such agreements will be included in the Customs Code of the Union.

According to the comments of the working group drafting the Customs Code of the Union, among other things the new Customs Code will give priority to electronic customs declarations, carrying out customs operations via the information systems of the relevant bodies, mutual recognition of authorized economic operators, use of a "one window" mechanism, focusing on the post-customs control. In prospect the requirement on submission of documents evidencing compliance with technical regulations of the Customs Union from the customs declaration could be excluded.

## Foreign trade policy

The common Foreign Economic Activity Commodity Classifier and the Common Customs Tariff that are approved by the Commission and serve as instruments of the trade policy of the Union should apply as part of the customs and tariff regulations in the customs territory of the Union. The main types of import duties remain unchanged. Customs exemptions and tariff quotas may apply within the tariff regulation.

The following common measures of non-tariff regulation are applied as part of the non-tariff regulation in third-party trading operations: (i) the prohibition of import and/or export of goods; (ii) quantitative restrictions on the import and/or export of goods; (iii) the exclusive right to export and/or import goods; (iv) automatic licensing (monitoring) of export and/or import of goods; and (v) authorization procedure for import and/or export of goods.

Notwithstanding the provisions of the Treaty, member states may unilaterally grant trade preferences to a third party on the basis of international agreements entered into before 1 January 2015.

Member states should unify the agreements under which the preferences are being granted.

Special protective antidumping and countervailing measures taken in respect of goods imported into the customs territory of the Union by way of revising special protective, antidumping and countervailing measures that were in effect in accordance with the laws of the member states will apply until the date of expiry of the above measures established by the relevant decision of the Commission and may be subject to revision in accordance with the provisions of the Treaty.

For purposes of implementing the provisions concerning tariff preferences in respect of goods originating from developing countries and/or least developed countries, the Protocol on the Common System of Tariff Preferences of the CU of 12 December 2008 should be applied until a decision of the Commission on that issue enters into force.

Pending the entry into force of a decision of the Commission, which establishes the rules for determining the origin of goods, the Agreement on Common Rules for Determining a Country of Origin of Goods of 25 January 2008 and the Agreement on Rules for Determining the Origin of Goods from Developing and Least Developed Countries of 12 December 2008 should apply.

### Technical regulation

The issue of technical regulation within the Union is of no less importance. The principles of integration of technical regulation within the CU became the basis for integration within the Union.

Let us briefly focus on the platform for technical regulation within the common territory of the Union:

- Member states approve a unified list of products for which mandatory requirements are established within the Union (the "Unified List"). For such products technical regulations are developed that have a direct effect in the territory of the Union. No additional requirements for the products included in the Unified List may be brought by national legislations.
- For products which are not included in the Unified List, technical regulation is developed by member states on their own.
- Member states mutually recognize documents evidencing compliance of products that are not included in the Unified List.
- Member states harmonize the rules for assessing compliance and mutually recognize the accreditation of certification bodies and testing laboratories that perform work on compliance confirmation.
- Member states harmonize the measurement system.
- Common documents are approved with respect to compliance of products and a single mark of compliance of products with technical regulation.
- Member states harmonize their national legislation on the establishment of liability for violation of the requirements of technical regulations.

### Trade in services, establishment, operation and investments

The Treaty regulates the issues of trade in services, establishment of entities (including the acquisition of an interest or control in the existing legal entities), entrepreneurial activities and investment. The provisions of the Treaty on these issues have replaced the Agreement on Trade in Services and Investments in the Member States of the Common Economic Space of 9 December 2010, which was previously entered into within the CU.

The purpose of the Treaty concerning trading in services, establishing entities, entrepreneurial activities and investment is to ensure freedom of relations in these areas by providing no less favorable treatment, liberalization and harmonization of legislation and progressive simplification of excessive regulation. At the same time, as before, the Treaty sets lists of limitations and exceptions, which should be reduced gradually. In Kazakhstan for example, restrictions and exceptions have been set against property and permanent land use, advantage on the basis of local content and transactions with strategic resources.

New provisions of the Treaty concerning trade in services, establishment of entities, entrepreneurial activities and investment compared to the old Agreement of 9 December 2010 proscribe changes in the requirements to the approval procedure for draft normative legal acts as well as the introduction of rules on the resolution procedure for investment disputes (for more details on the procedure for resolution of investment disputes please see "Some aspects of the imposition of penalties and dispute resolution" below).

Thus, in accordance with the transparency principle, draft normative legal acts dealing with matters of trade in services, establishment of institutions, entrepreneurial activities and investment should, as a general rule, be published on the Internet thirty (30) calendar days prior to their adoption with the possibility for all interested parties to submit comments and proposals thereon.

### Regulation of financial markets

As part of the Treaty, member states agree to carry out coordinated regulation of the financial market. The financial market, under the Treaty, covers activities in the banking and insurance sectors, as well as in the services

sector for the securities market. The member states provide for the basic principles of financial market regulation in the Treaty. The development of the following principles is new compared to the previous arrangements reached among the member states.

In particular, the regulation of financial markets must meet the following principles and objectives:

- Deepening of integration and non-discrimination in terms of access to the financial markets of the member states.
- Guarantees of the rights of consumers of financial services.
- Creation of conditions for the mutual recognition of licenses in financial market sectors in the Union.
- Determination of an approach to the management of financial risks in accordance with international standards.
- Determination of requirements for the implementation of financial activities (in particular, prudential requirements).
- A unified approach to supervision of financial market participants.
- Ensuring transparency of activities of financial market participants.

It is noteworthy that certain arrangements have already been reached among the member states with respect to the provision of financial services in their territories under Annex V of the Agreement on Trade in Services and Investment in the Member States of the Common Economic Space of 9 December 2010 (the "Agreement"). The Treaty will in turn replace the said Agreement. The Treaty describes more specifically and fully the direction in which the integration of member states' legislations will be developing. At the same time, it has retained many of the provisions and principles of the Agreement. We emphasize that member states will have to develop harmonized requirements for financial market regulation.

In the banking sector, member states will be guided by the best international practice and fundamental principles of effective banking supervision of the Basel Committee on Banking Supervision.

The Treaty defines a provisional list of areas in which harmonization should take place. In particular, the changes will directly affect:

- The developing of a common definition of a "credit institution".

- The procedure, mechanisms, peculiarities and conditions for the establishment, reorganization and liquidation of credit institutions.

- Grounds for revocation of licenses.

- Ensuring the financial soundness of credit institutions - types of activity will be determined in addition to banking activities, which will be permitted for credit institutions.

- Requirements for prudential standards, mandatory reserves and special provisions.

- The procedure for supervision of credit institutions, bank holding companies and banking groups.

- An approach to financial recovery and bankruptcy of credit institutions (including the regulation of the rights of creditors and priority of claims).

- A list of operations to be recognized as bank operations.

In the insurance sector, harmonization will, among other things, affect:

- The creation of a single definition of a "professional participant of the insurance market".

- The procedure and conditions for the establishment and licensing of insurance activity.

- Grounds for revocation of licenses.

- The procedure, mechanisms and conditions for liquidation of a professional participant of the insurance market.

- Ensuring the financial sustainability of a professional participant of the securities market, in particular, with regard to the adequacy of insurance reserves, the composition and structure of assets, and the minimum level and procedure for the formation of the charter capital and owner's equity.

- The procedure for supervision of professional participants of the insurance market will be established.

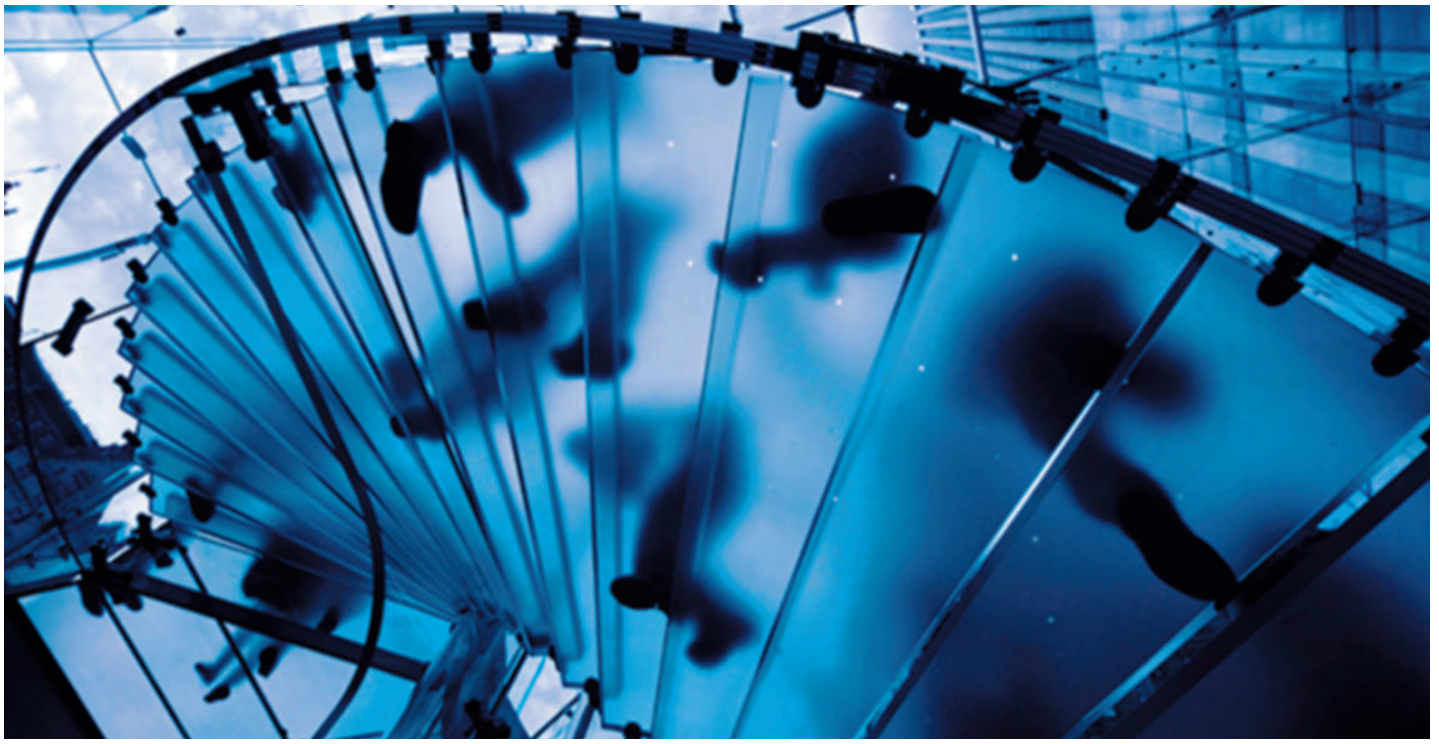
- The requirements for the composition of insurance groups and insurance holdings will be established.

In the services sector for securities, the member states will harmonize the legislative requirements concerning:

- Broker-dealer activities in the securities market
- Activities concerning the management of securities, financial instruments, assets and investment portfolios of pension funds and collective investments
- Clearing activities
- Depository activities
- Activity for keeping the register of securities holders
- Activity for the organization of trade in the securities market.

The main new features in comparison with the provisions of the Agreement will be:

- For financial market players established in accordance with the laws of one of the member states in respect of their activities in the territory of another member state,



subject to certain restrictions – national treatment and most favored nation treatment in respect of establishment and/or activities that will be provided by member states under the Treaty. In particular, this will be expressed in the possibility to provide financial services without establishing a legal entity on the territory of another member state, provide services through branches, as well as provide financial services on a cross-boundary basis; and

- In the securities market, in addition to the harmonization of legislation concerning the establishment and regulation of its members, requirements will be harmonized with respect to the issuance of securities by issuers in the territories of member states, as well as requirements for the placement and circulation of securities in the territory of member states, provided that they are issued on the territory of only one member state. Also, harmonized requirements will be developed in the area of unlawful use of insider information and manipulations of the securities market.

Eventually, after reaching a certain level of integration of legislation, member states will also have the option of creating a single financial regulator in the territory of the Union.

However, the member states have currently agreed and upheld, within the Treaty, a number of existing limitations to the implementation of activities in their financial markets. In particular, the limitations in relation to the financial market of Kazakhstan will remain effective for an indefinite period, including inter alia: (i) prohibition on banking activities in the territory of Kazakhstan through branches of foreign banks, (ii) insurance of property interests of Kazakhstan residents on the territory of Kazakhstan only by Kazakhstan insurance companies, and (iii) the requirement for the legal form of finance companies.

For as long as the restrictions on the financial markets of member states continue to exist, it will not be possible to realize the Treaty's full potential, and the liberalization of national legislations set out in the Treaty looks relative. We hope that the specific terms of liberalization and removal of restrictions on the activities of financial institutions will be agreed upon soon, and the tremendous potential laid in the field of financial services will be fully achieved.

### Energy sector

Under the Treaty, gradual formation of common markets of electric power, gas, oil and oil products is planned. The development of concepts and programs for the formation of such common markets is planned for 2015–2018. Preliminarily, the Treaty has established the following dates for the entry into force of common markets: electric power market by 1 July 2019; gas, oil and oil products markets by 1 July 2025.

### Taxes and taxation

In the area of taxation, the Treaty regulates the procedure for collection of indirect taxes: VAT and excise duties on export and import of goods and provision of services.

For these purposes, the Protocol on the Procedure for the Collection of Indirect Taxes and the Mechanism of Control over their Payment in Export and Import of Goods, Performance of Work, and Provision of Services

was adopted as an annex to the Treaty. This Protocol included, with minor changes, the current protocols of the CU: (i) the Protocol on the Procedure for Collection of Indirect Taxes and the Mechanism of Control over their Payment in Export and Import of Goods in the CU and (ii) the Protocol on the Procedure for Collection of Indirect Taxes in Performing Work or Provision of Services in the CU.

The new protocol contains details among other things regarding:

- Determining the place of the sale of goods
- The procedure for submitting documents for export and import of goods
- The procedure for payment of indirect taxes on goods imported by the agent or attorney
- Determining the tax base in some cases
- The procedure for payment of indirect taxes when returning imported goods.

The Treaty provides for the cases when indirect taxes on import are not charged. An important specification is made in respect of exemption from taxation for import of goods transferred within the same legal entity. The current legislation does not have such a specification, which creates problems for the transfer of goods between branches of the same legal entity located in different states.

The Treaty provides for the possibility of exchange of information between the tax authorities of member states on the basis of a separate interagency agreement.

With regard to the taxation of individuals, the Treaty provides for withholding taxes from residents of one member state employed in another member state at the rates established by the legislation of the state in which such work is carried out.

## State procurement

For an economic union, issues concerning free movement of goods and services, including those for public use, are crucial. The Treaty aims to provide free access, for example, to Kazakhstan suppliers for a government procurement carried out in Russia and Belarus, and vice versa.

This objective will be achieved by member states through the following means:

- Granting national treatment to suppliers from member states, there must be no preference to domestic suppliers.
- Harmonization of legislation (establishing uniform requirements to procurement participants and procurement, the criteria for admission to trading platforms, the requirements for determining winners, as well as government procurement methods, etc.).
- Organization of a single resource on the Internet that will give access to all information on government procurement of each member state.
- Mutual recognition of electronic signatures made in accordance with the laws of one of the member states, which will provide free access to electronic procurement in each state.
- Establishing uniform requirements for conducting

procurement in electronic format, including a three country-wide list of products to be procured by an electronic auction.

- Maintaining a single register of disreputable suppliers.

We note that exclusion from national treatment for companies from member states of the Treaty is possible only for a term not exceeding two years. However, the Commission may revoke the act of a member state establishing exclusion from national treatment.

The Treaty does not apply to procurement where information is a state secret and procurement carried out by the national banks of member states.

### Intellectual property

The Treaty contains obligations of the parties with respect to intellectual property ("IP"). Most rules in this area are declarative provisions that the parties will cooperate in the area of protection and enforcement of IP through their state authorities. The Treaty and annexes to it also list the principles of protection of various IP items.

We note, however, that the Treaty provides for a number of initiatives that can be considered a significant development of regional protection and security of IP items. However, they cannot be considered new provisions for the Union. Those initiatives have already been implemented by Russia, Belarus and Kazakhstan within the CU. They include:

- A single system of registration for trademarks and appellations of origin which will operate in the territory of all member states of the Union.

- A single customs register of IP (a technical measure restricting the entry of goods into the market before the issue of violation of IP rights is clarified).

It is worth noting that the Treaty provides for national treatment of protection and security of IP for entities of member states in the territory of the Union.

We believe that in furtherance of the Treaty, relevant rules will be adopted that will describe in detail how the single system of registration for trademarks and appellations of origin will operate and how the single customs registry will work.

The Parties will also have to solve a number of issues related to existing national systems of protection, for example, for trademarks. Will the existing registration of a trademark in at least one of the member states of the Union be the basis for denial of the registration of a single trademark of the Union? The Treaty does not address this issue.

### Industry

Within the framework of the Treaty, member states will independently develop and implement their own national industrial policies and determine the ways, forms and directions of provision of industrial subsidies. Industrial subsidies mean financial assistance or any other form of maintenance of income or price for producers of industrial goods. Member states are to ensure the entry into force of an international treaty from 1 January 2017, which will determine the procedure for coordination with the Commission of subsidies and adoption by the Commission of the relevant decisions, including the procedure for conducting proceedings and the criteria for determining the permissibility of specific subsidies. No approval by the Commission of industrial subsidies will be required until 1 January 2017.

### Labor migration

From the effective date of the Treaty (1 January 2015), the existing Agreement on the Legal Status of Migrant Workers and Members of Their Families of 19 November 2010 will cease to have effect, and in this regard the procedure for migrant workers' employment and related issues will be governed by the provisions of the Treaty which contains the relevant provisions.

The Treaty introduces the option of employing the labor of member states ("Workers") not only on the basis of an employment contract but also on the basis of a civil contract for the performance of work (a service contract). Accordingly, all of the provisions (privileges, rights and obligations) regarding Workers will apply not only to persons working under an employment contract, but also to persons working under service agreements.

The concept of "the customer of work/services" has appeared and means a legal entity or an individual who provides a Worker with work on the basis of a service contract executed with him/her, and upon the execution of such an agreement, such legal entity or individual will have the rights and obligations of an employer.

To enable Workers to work, documents confirming their education issued by educational organizations (educational establishments, organizations in the education sector) of member states will be recognized in the country of their employment without the need to carry out procedures for recognizing documents confirming education established by the country of employment. However, Workers of one member state applying for engagement in educational, legal, medical or pharmaceutical activity in another member state will have to undergo a recognition procedure for documents confirming their education established by the legislation of the state of employment and may be admitted, respectively, to educational, legal, medical or pharmaceutical activities in accordance with the laws of the state where they are employed.

The main provisions relating to labor activity by Workers remain unchanged, including: (i) exemption of Workers from the need to obtain work permits in the state of employment; (ii) the period of temporary stay (residence) of Workers and members of their families in the state where they are employed will be determined by the term of the employment contract (and, from the effective date of the Treaty, also by the term of the service contract); (iii) exemption of Workers and members of their families from the obligation of registration (recording) within 30 days from the date of entry; (iv) in the event of early termination of an employment contract or civil contract, after the expiry of 90 days from the date of entry to the state of employment, Workers have the right to enter into a new employment contract or service contract within 15 days after such termination without leaving the state where they were employed.

### Regulation of access to rail transport

An important innovation of the Treaty is a provision stating that member states set (change) tariffs for railway transportation and/or their threshold limits (price limits) independently, in accordance with the laws of such member state.

### Local content in subsurface use contracts

According to the Treaty, for subsurface use contracts Kazakhstan retains certain requirements for local content (on the terms to be set out in Kazakhstan's WTO accession protocol). However, when subsoil use contracts were executed before the Treaty entered into force, i.e., before 1 January 2015, the terms and conditions of such contracts will apply. With regard to contracts concluded after the Treaty entered into force (i.e., after 1 January 2015 years), the following terms and conditions will apply:

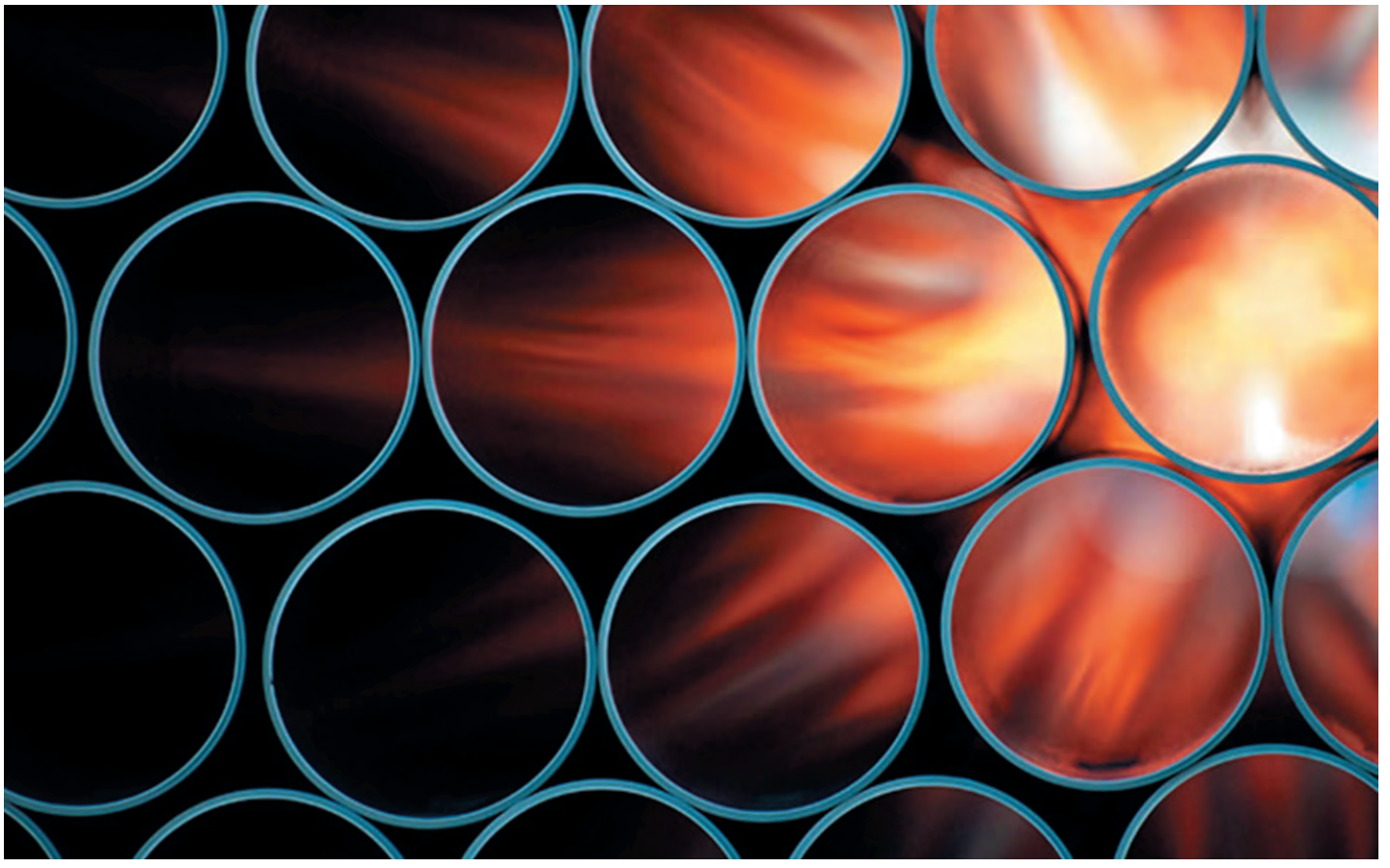
Kazakhstan will retain the right to require purchase of services from Kazakhstan legal entities:

- (a) for contracts for solid minerals – not more than 50 percent;
- (b) for contracts for hydrocarbons:
  - before 1 January 2016 – not more than 70 percent,
  - from 1 January 2016 until the accession of Kazakhstan to the WTO – not more than 60 percent,
  - from the date of Kazakhstan's accession to the WTO – not more than 50 percent.

Subsurface users must conventionally reduce the price of the bids of Kazakhstan legal entities by 20 percent if Kazakhstan citizens constitute at least:

- 75 percent for six years from the date of Kazakhstan's accession to the WTO.
- 50 percent after six years from the date of Kazakhstan's accession to the WTO.
- of the total number of its skilled workers.

In the terms of tenders for the right to subsurface use, Kazakhstan will not establish a minimum local content with



respect to personnel or services in excess of 50 percent. In determining the winner of the tender, an offer with a level of local content in personnel and services of more than 50 percent will not be taken into account.

The requirements with respect to Kazakhstan content in accordance with the contracts will remain the same until 1 January 2023, unless Kazakhstan's WTO accession protocol provides otherwise.

### Local content in procurements of Samruk-Kazyna NWF

The current requirements for local content in the procurement by the Samruk-Kazyna National Welfare Fund (NWF) and by organizations in which the Samruk-Kazyna NWF directly or indirectly owns 50 percent or more of the voting shares/participatory interests as well as by companies that are directly or indirectly owned by the state will remain the same until 1 January 2016, unless Kazakhstan's WTO accession protocol provides otherwise.

### Some aspects of the imposition of penalties and dispute resolution

In carrying out activities as part of the Union, it should be kept in mind that the competence of the Commission includes, without limitation, initiation and consideration of cases on violation of the rules on competition laid down by the Treaty. On the whole, rules on competition remain unchanged compared to the Agreement on Uniform Principles and Rules of Competition of 9 December 2010. Based on the results of consideration of such cases, the Commission will issue binding decisions, including on the imposition of penalties on business entities for unfair competition, anti-competitive agreements, coordination of economic activity, abuse of dominant position, etc. It should be noted that the amounts of fines have been increased in comparison with the fines established by the Agreement on Uniform Principles and Rules of Competition of 9 December 2010. Acts of the Commission may be appealed in the Court of the Union.

In addition, the Treaty has introduced provisions on the settlement of investment disputes. In particular, according to the Treaty, disputes may, at the discretion of an investor, be referred for consideration to: (1) the court of the state in the territory where the investments are made, (2) International Commercial Arbitration at the Chamber of Commerce of any state (in Kazakhstan this is the center of arbitration at the National Chamber of Entrepreneurs), (3) the ad hoc arbitration court according to the UNCITRAL Arbitration Rules, or by agreement of the parties to the dispute, according to other rules; or (4) the International Centre for Settlement of Investment Disputes (ICSID).

We understand that the purpose of these innovations is to provide investors with the right to apply to any of the above institutions or ad hoc tribunal without a special arbitration agreement between the investor and the member state. However, the wording that the dispute "may be referred" is not very clear – a more appropriate phrase would be "shall be referred" because the State can theoretically argue that the Treaty contains only the possibility of referral of disputes to arbitration rather than an explicit and unconditional right; therefore, for any institute or tribunal to have ad hoc jurisdiction to settle a dispute, there must be a direct agreement between the investor and the state. At the same time, given the general meaning of the Treaty, it appears that the risk of such an unfavorable interpretation is small.


**Victoria Simonova**
**Partner**

Victoria is Co-Head of Dentons' Litigation and Dispute Resolution practice in Kazakhstan. She has extensive experience in commercial litigation and arbitration especially in the energy sectors and engineering and construction. Victoria also has experience in mergers and acquisitions. She has advised a number of oil and gas, telecommunications and construction companies on large-scale M&A transactions.

**Bakhyt Kadyrova**
**Associate**

Bakhyt focuses on dispute resolution, oil and gas and mining projects, corporate and commercial law. Her experience includes advising clients on issues relating to subsoil use rights, conducting due diligence on subsoil users, assistance in international arbitration and litigation.

**Aida Erezhepova**
**Paralegal**

Aida focuses on corporate law, business registration and liquidation issues.

# Kazakhstan amends legislation to improve the investment climate

## On 12 June 2014 the President signed the Law on Introduction of Changes to Certain Legislative Acts of the Republic of Kazakhstan on Improvement of the Investment Climate (the "Law").

The Law became effective on 23 June 2014, although provisions of the Law relevant to tax preferences will come into force on 1 January 2015.

The Law introduces investor-oriented changes in several legal acts including the Law on Investments,[1] the Tax Code,[2] the Land Code, the Law on Natural Monopolies, the Law on Employment and others. One of the key benefits envisaged by the Law is to provide stability of tax and labor legislation to investors from the date an investment contract is concluded until the contract expires, but with a limitation of 10 years.

The Law links the provision of benefits to investors with the implementation of a "prioritized investment project" under an investment contract. The term "investor" includes individuals and legal entities performing investments [3] in Kazakhstan. According to the Law on Investments, the term "investment project" refers to a range of activities associated with investment in a new facility, or expansion and renewal of existing facilities, including various types of manufacturing activities and activities under concession agreements, whereas "prioritized investment project" includes investment projects implemented by newly created legal entities in prioritized types of activities approved by the Government, provided that invested funds are not lower than two million monthly calculated indexes.[4]

Article 14 of the Law on Investment now specifies that investment preferences may be provided on the basis of an investment contract concluded between the Kazakhstan legal entity implementing the project and the authorized body (Committee on Investments of the Ministry of Industry and New Technologies). In addition, the law specifies that investment preferences associated with the implementation of "prioritized investment project" can be granted to a newly created Kazakhstan legal entity that complies with certain requirements. Notably the investment preferences cannot be granted to investors partially owned by the state or quasi-state entities, investors attracting funds from the state budget for implementation of a project, investors implementing projects under concession (PPP) contracts, etc. In order to apply for conclusion of an investment contract, a potential investor should provide a number of documents confirming its financial, technical and managerial abilities and obtain the corresponding Government approval (if necessary).

The list of investment preferences available to investors under the Law on Investments[5] has been revised and now includes two sets of investment preferences: (i) investors involved in implementation of "investment projects" are eligible for exemption from customs duties and state grants in kind; (ii) investors involved in the implementation of "prioritized investment projects" in addition to these preferences, might enjoy "tax preferences" and "investment subsidies." These preferences cannot be applied within the territories of the special economic zones.

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[1] Law of the Republic of Kazakhstan dated 8 January 2003 No.373-II On Investment (the "Law on Investments")

[2] Code of the Republic of Kazakhstan dated 10 December 2009 No.99-IV on Taxes and Other Obligatory Payments to the State Budget (the "Tax Code")

[3] Article 1.3 of the Law on Investments defines investments as all types of property (except for goods intended for personal use) including property acquired under financial lease since execution of financial lease contract and all rights to this property invested by an investor in charter capital of a legal entity or increase of fixed assets used in entrepreneurial activity, as well as fixed assets produced or acquired under concession agreement by concessionaire (assignee)

[4] In 2014 approximately US$20 million

[5] Article 13 of the Law on Investments

According to the Law on Investment, the new term "investment subsidy" refers to partial reimbursement by the State of the investor's costs related to construction works and the acquisition of fixed assets upon completion of the working program within amounts indicated in project documentation certified by state expertise. The amount of subsidy should not exceed 30 percent of an investor's capital costs.

According to the comprehensive action plan for attracting foreign and domestic investments (the "Action Plan") adopted by the Government, the list of prioritized activities includes: production of machines and equipment for agriculture, oil and gas, mining, chemical and petrochemical industries, production of construction materials, food processing, pharmaceuticals, logistics and transportation services, information technology, etc. The Action Plan includes a list of potential foreign investors for each type of prioritized activities.

The tax preferences envisaged by the Law include the exemption of an investor implementing a "prioritized investment project" from corporate income tax on activities related to the investment project for a maximum period of 10 years from execution of an investment contract, exemption from land tax and property tax. These tax benefits are available to newly created entities implementing prioritized investment projects that derive not less than 90 percent of their gross annual revenues from activities under the investment contract. At the same time the Law extends the statute of limitations for the tax purposes for the life of an investment contract plus five years after expiration or termination of such investment contract.

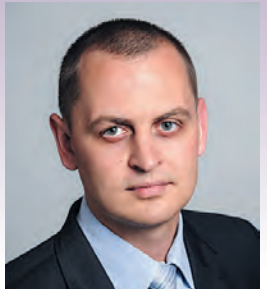
In addition, the Law exempts investors from compliance with foreign labor quotas and work permit requirements in respect of foreign personnel employed by investors implementing "prioritized investment contracts" and their contractors and subcontractors involved in architecture and construction activities until the expiration of one year after the commissioning of an investment object. This exemption covers categories of foreign employees including managers, specialists with higher education and skilled workers included in the lists of positions under investment contract.

### Aigoul Kenjebayeva
### Managing Partner

With over 35 years' experience as a practicing lawyer, Aigoul's particular areas of focus include oil and gas and mineral resource projects, corporate/M&A, PPP/ infrastructure projects, competition law, IP and dispute resolution. Aigoul is consistently named as a leading expert in Kazakhstan by *Chambers Global, The Legal 500, PLC Which Lawyer? Who's Who Legal, IFLR1000* and *Who's Who* in the Republic of Kazakhstan.

### Kanat Skakov
### Partner

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 also Co-Head of Dentons' Litigation and Dispute Resolution practice in Kazakhstan. Kanat is one of the leading dispute resolution lawyers in Kazakhstan, having successfully represented national and multinational companies in more than 400 disputes during the past 12 years.



### Stanislav Lechshak
### Associate

Stanislav advises clients mainly in the oil and gas, mining, construction and telecommunication fields. He is also experienced in advising clients on various customs issues.

# 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 |
|---|---|---|
| | Kingdom of the Netherlands, The Hague, November 27, 2002 | RK Law No. 250-III dated May 8, 2007 |
| | State of Kuwait, El-Kuwait, August 31, 1997 | RK Law No. 36-II dated February 22, 2000 |
| | Czech Republic, Prague, October 8, 1996 | RK Law No. 119-1 dated June 11, 1997 |
| | Republic of Estonia, Tallinn, April 20, 2011 | RK Government Resolution No. 423 dated April 18, 2011 |
| | Republic of Romania, Astana, March 2, 2010 | RK Law No. 119-V dated July 2, 2013 |
| | Republic of Austria, Vienna, January 12, 2010 | RK Law No. 41-V dated October 17, 2012 |
| | Socialist Republic of Vietnam, Astana, September 15, 2009 | RK Law No. 174-V dated February 18, 2014 |
| | Qatar, Astana, March 4, 2008 | Draft law on ratification being considered |
| | Slovak Republic, Bratislava, November 21, 2007 | Draft law on ratification being considered |
| | Republic of Finland, Astana, January 9, 2007 | RK Law No. 16-IV dated January 11, 2008 |
| | Hashemite Kingdom of Jordan, Amman, November 29, 2006 | RK Law No. 21-IV dated March 20, 2008 |
| | Republic of Armenia, Astana, November 6, 2006 | RK Law No. 278-IV dated May 22, 2010 |
| | Kingdom of Sweden, Stockholm, October 25, 2004 | RK Law No. 133-III dated March 17, 2006 |
| | Republic of Latvia, Astana, October 8, 2004 | RK Law No. 132-III dated March 17, 2006 |
| | Islamic Republic of Pakistan, Islamabad, December 8, 2003 | RK Law No. 134-III dated March 17, 2006 |
| | Hellenic Republic, Almaty, June 26, 2002 | Draft law on ratification being considered |
| | Republic of Tajikistan, Dushanbe, December 16, 1999 | RK Law No. 249-II dated October 17, 2001 |
| | Republic of Bulgaria, Sofia, September 15, 1999 | RK Law No. 202-II dated May 15, 2001 |
| | Russian Federation, Moscow, July 6, 1998 | RK Law No. 314-1 dated December 11, 1998 |
| | Belgium-Luxembourg Economic Union, Almaty, April 16, 1998 | RK Law No. 23-II dated December 30, 1999 |
| | French Republic, Paris, February 3, 1998 | RK Law No. 77-II dated July 5, 2000 |

| No. | Counterparty, venue and date | Document of the Republic of Kazakhstan regarding joining / approval / ratification or other information |
|---|---|---|
| | Republic of Uzbekistan, Almaty, June 2, 1997 | RK Government Resolution No. 1309 dated August 29, 1997 |
| | Kyrgyz Republic, Almaty, April 8, 1997 | RK Law No. 174-1 dated October 28, 1997 |
| | Republic of India, Deli, December 9, 1996 | RK Law No. 226-1 dated May 8, 1998 |
| | Georgia, Tbilisi, September 17, 1996 | RK Law No. 199-1 dated December 5, 1997 |
| | Republic of Azerbaijan, Baku, September 16, 1996 | RK Law No. RK Law No. 198-1 dated December 5, 1997 |
| | Malaysia, Kuala Lumpur, May 27, 1996 | RK Law No. 120-1 dated June 11, 1997 |
| | Republic of Romania, Bucharest, April 25, 1996 | RK Law No. 43-I dated November 22, 1996 |
| | Republic of Korea, Almaty, March 20, 1996 | RK Law No. 45-I dated November 22, 1996 |
| | Islamic Republic of Iran, Almaty, January 16, 1996 | RK Law No. 17-I dated July 2, 1996 |
| | Israel, Jerusalem, December 27, 1995 | RK Law No. 22-1 dated July 12, 1996 |
| | United Kingdom of Great Britain and Northern Ireland, London, November 23, 1995 | RK Law No. 44-I dated November 22, 1996 |
| | Republic of Hungary, Budapest, December 7, 1994 | Decree of the President of the RK No. 2276 dated May 12, 1995 |
| | Mongolia, Almaty, December 2, 1994 | Decree of the President of the RK No. 2249 dated April 29, 1995 |
| | Republic of Poland, Almaty, September 21, 1994 | Decree of the President of the RK No. 2277 dated May 12, 1995 |
| | Ukraine, Almaty, September 17, 1994 | Decree of the President of the RK No. 2218 dated April 20, 1995 |
| | Republic of Lithuania, Almaty, September 15, 1994 | Resolution of the RK Supreme Council No. 299-XIII dated February 20, 1995 |
| | Swiss Federal Council, Almaty, May 12, 1994 | RK Law No. 228-1 dated May 8, 1998 |
| | Arab Republic of Egypt, Cairo, February 14, 1993 | Decree of the President of the RK No. 2460 dated September 15, 1995 |
| | People's Republic of China, Beijing, August 10, 1992 | Resolution of the RK Supreme Council dated June 8, 1994 |
| | Republic of Turkey, Almaty, May 1, 1992 | Resolution of the RK Supreme Council No. 1943-XII dated January 29, 1993 |
| | Kingdom of Spain, Madrid, March 23, 1994 | Decree of the President of the RK No. 2240 dated April 26, 1995 |

# New code on administrative offences: tougher or softer?

On 5 July 2014 a new Code on Administrative Offences ("Code" or "new Code") was adopted. The Code will come into effect on 1 January 2015, and the current Code on Administrative Offences dated 30 January 2001 ("current Code") will cease to be in effect.

One provision of the Code will be enforced later (item 8 of part 5 of article 281 establishing liability for sale/delivery of certain oil products without monitoring devices, which will come into effect on 1 January 2016). Here follows our brief review of general changes under the new Code.

## Fixed fines

The current Code, in most articles, provides ranges of possible fines (e.g. from 100 to 200 monthly calculated indexes ("MCI")). The new Code fixes the fines applicable to offences, without a possibility to impose a higher or a lower amount (e.g. 200 MCI). Some press releases on the new Code have reported that liabilities under the new Code have been reduced. However, this is mostly true for small scale business entities. For medium and large scale business entities, the liability is often fixed at the maximum levels previously applicable, and in some cases the new Code even increases the fines. Also, for almost all offences, the new Code introduces scales of fines depending on the size of the entity offending (individual entrepreneurs bear administrative liability as small scale business participants). In the current Code such differentiation is in place only for some offences.

## New appeal options

An important novelty of the Code is the introduction of appeal procedures for enacted rulings (i) by the court of cassation and (ii) in connection with the discovery of new evidence. Current wording of the Code is not clear on how the cassation procedure would work in practice. According to part 2 of article 847, a cassation appeal can be filed within six (6) months from the announcement of a ruling that worsens the position of a person subject to administrative liability. Would it be possible to appeal a ruling that does not change the sanction? In case of negative interpretation of this provision there is a potential risk that the appeal of such rulings in cassation order would not be allowed.

## Detailed description of offences

The new Code tends to avoid general descriptions of offences that could theoretically include many violations. In most cases the general articles of the current Code will be replaced with more detailed descriptions, indicating specific actions that entail administrative liability. For instance, a general article on violation of labor legislation (article 87 of the current Code) is to be replaced in the new Code with a number of articles, specifying which exact violations of the labor legislation entail administrative liability (including admission to work without an employment agreement, failure to pay the salary in full volume and with violation of terms, failure to pay overtime work, failure to provide vacation for two (2) subsequent years). The same detailed description of offences has been introduced with respect to violations of legislation on areas such as employment (article 98 of the new Code), TV and radio broadcasting (article 452 of the new Code), security business (article 470 of the new Code), use of air space (article 563 of the new Code), etc.

## No multiple charges for a single offence

The current Code allows for the simultaneous liability of a legal entity and its manager (official) for the same offence. The reason for that is a possibility to interpret the term "official" under the current Code as both (i) state officials and (ii) officials of a legal entity (i.e. responsible employees). The new Code in its article 30 introduces a definition of term "official", which would now expressly include only state officials and officials of quasi-public organizations. In addition, part 4 of article 33 expressly provides that imposing an administrative liability on a legal entity releases the employees of such legal entity from liability for such offence. Therefore, it will no longer be possible to impose liability on an entity and its managers for the same offence.

Summarizing the above, although the sanctions for large scale businesses will be tougher under the new Code, there are also a number of positive changes. In particular, excluding the liability of a legal entity's management, the introduction of new appeal options, and detailed descriptions of offences should make application of the new Code more transparent and clear.

Bakhyt Kadyrova
Associate

# The Law on Rehabilitation and Bankruptcy

## Law No. 176-V "On Rehabilitation and Bankruptcy" came into effect on 25 March 2014.

The Law "On Rehabilitation and Bankruptcy" (Law) has replaced the Law "On Bankruptcy" dated 21 January 1997. The law applies to legal entities and individual entrepreneurs. As with its predecessor, the Law does not apply to state owned entities, pension funds, banks and insurance companies (for which special provision is made in the relevant legislation).
Compared with the previous law, the Law focuses more on rehabilitation procedure.
The Law contains several elements that were not previously addressed in Kazakhstan's insolvency legislation.

### Petition for bankruptcy

The classes of creditors who may petition for bankruptcy are no longer limited to tax creditors and commercial creditors. Creditors under personal injury damages, unpaid alimony, employee compensation, contributions to the National Social Insurance Fund, pension contributions and mandatory professional pension contributions and compensation due under copyright agreements may also petition for the bankruptcy of a debtor, if such claims have not been paid within three (3) months from their due date and their amount is 100 Monthly Calculated Indexes (~US$1000).

### Invalidation of transactions

The Law provides for a three (3) year hardening period, as in the previous Bankruptcy Law. The Law sets out several grounds for invalidation of transactions, in addition to the grounds envisaged in Kazakhstan's Civil Code. Those additional grounds are: (i) that the price and/or other terms are substantially worse than those on which similar transactions are undertaken and the transaction led to a financial loss; (ii) that the transaction is outside any limits on the debtor's business activities, are imposed by law or by the debtor's constitutive documents, or were not properly authorized; (iii) that property was transferred free of charge (including for temporary use), or at a price significantly below market value and to the detriment of the creditors; (iv) that a transaction made within the previous six (6) months advantaged one creditor (or group of creditors) over others; (v) that the transaction constituted a gift by the debtor outside of its ordinary business activities.
In addition, an administrator (temporary administrator, rehabilitation, temporary, and bankruptcy trustee as defined under the Law) may challenge in court a reorganization made by way of accession, demerger and segregation which led to the dissolution of assets.

### No termination upon bankruptcy proceedings

Provisions of a contract which provide for termination/refusal to perform the contract in the event of the bankruptcy of a counterparty are now recognized under the Law as invalid. In some instances a rehabilitation trustee may refuse to perform an agreement which is not performed by both parties.

## Set-off

The Law provides for the possibility of set-off of money claims within rehabilitation and bankruptcy when such set-off is direct, mutual and does not affect the priority of claims of other creditors.

## Affiliated parties

In the general creditors meeting creditors which are affiliates of the debtor do not have voting rights until full satisfaction of claims of unaffiliated creditors. Kazakhstan laws provide an explicit definition of an affiliate party. In particular the definition covers ultimate beneficial owners, ten (10) percent holders of the capital of Kazakhstan counterparty and any other entity which has control (e.g., ability to influence the decisions of an entity) over a Kazakhstan entity.

## Priority of claims

The Law provides for a new order of priority of claims, as follows: (i) Claims resulting from personal injury damages, unpaid alimony, employee compensation, contributions to the National Social Insurance Fund, pension contributions and mandatory professional pension contributions, and compensation due under copyright agreements; (ii) secured creditors; (iii). tax claims and claims of governmental charges; (iv) claims of other unsecured creditors under commercial agreements; (v) claims for losses and penalties.

## Secured creditors

Under secured creditors the Law recognizes creditors secured by way of pledge (zalog) documented pursuant to Kazakhstan law. It is by far not certain what was meant under this wording; however, it probably means pledges governed by Kazakhstan law. The Law envisages that secured obligations may be discharged by transfer of the pledged property to the secured creditors, with the consent of the general creditors' meeting. In the event the general creditors' meeting decides that that the pledged property is not to be transferred to the pledgee, such property will form a part of the liquidation estate, and secured creditors will be satisfied within the second line of priority.

## Timely presentation of claims

Time for presentation of creditors' claims in both scenarios (bankruptcy and rehabilitation) was cut to one month instead of two months, as previously. In the event claims are not submitted in time, the late creditor will lose the right to vote in the general creditors' meeting until satisfaction of rights of the creditors who have submitted their claims within the one month period.

## Rehabilitation in lieu of bankruptcy

In the event bankruptcy proceedings are commenced against a debtor, the debtor may request for application of a rehabilitation procedure in lieu of bankruptcy. The court will consider such an application and may sanction a rehabilitation plan with the consent of creditors.

* * *

We note that the Law is more detailed and provides for a great number of formalities that need to be addressed within fast rehabilitation, rehabilitation and bankruptcy proceedings. We assume that all efforts made by the legislators in order to ensure preservation of the debtor's assets will lead to rehabilitation procedures becoming more common. However, the Law is yet to pass the test of time, and it remains to be seen how often this procedure will be used.


### Adam Kaucher
Of Counsel

Adam is one of very few English solicitors practicing in Kazakhstan. He focuses on private and public company M&A work, advising buyers, sellers and funders. He has advised on many capital markets transactions and has for many years advised on transactions in CIS countries. He has solid private equity experience, having advised equity houses, management teams and investee companies. Adam has also acted on many banking and finance transactions, including commercial lending, acquisition finance and bond issues.

### Ruslan Degtyarenko
Associate

Ruslan focuses on banking law, corporate finance law and general corporate law. Diverse banking experience together with his knowledge in finance, financial institutions and risk management provide him with a better understanding of complex financial structures.

# Kazakhstan launches reform of its subsoil use legislation

Subsoil use legislation in Kazakhstan is soon to undergo a major overhaul. It is planned that the current Law "On Subsoil and Subsoil Use"[1] will be replaced with a new Code "On Subsoil and Subsoil Use" (Subsoil Code) in 2015.

A special working group under the Kazakhstan Ministry of Investments and Developments is preparing the Concept of the Subsoil Code (Concept) to be submitted to the Government. The first draft of the Concept was quite underdeveloped and contained some apparent discrepancies and gaps. The current draft Concept has been significantly revised and improved. It is possible that the draft Concept will be further amended, however we comment on some key provisions of the current draft Concept below.

***Limitation of state control.*** According to the draft Concept, two of the main objectives of the Subsoil Code would be the limitation of administrative regulation of subsoil use relations, and freer and more flexible market regulation. The developers of the Concept declare that the functions of state bodies in subsoil use relations must be clear, transparent and completely defined by the law. The state should not regulate issues related to economic feasibility and efficiency, and should limit its regulation to issues of human and environmental safety, sanitary norms and technical regulation. Subsoil users should independently regulate the volume of production depending on market conditions. In this regard it is proposed that the requirement for approval of work programs by the state authorities would be lifted (i.e. work programs would be developed and approved by subsoil users independently). Further, the review of project documents by state expertise would be limited only to environmental and production safety issues. State approval of project documents would be required only for the production stage of a subsoil use contract. Also, the developers of the Concept propose to bring an end to state regulation of subsoil users' procurement process.

***Permit for search.*** In addition to exploration and production stages the draft Concept proposes introduction of an optional preliminary 'search' stage. A right to search would be granted on the basis of a permit for a period up to three years and would not require a subsoil use contract. The purpose of the search stage would be the assessment of a site's potential for further development. The search stage would not require the obtaining of various state expertise or approval of project documents. The work program and project documents would be approved by subsoil users independently. The only obligation under a search permit would be fixed payments to the budget. The amount of such payments would be set by the Subsoil Code and depend on the site's area).

***Licensing regime.*** It is proposed that the contractual regime be retained for (i) hydrocarbons exploration and production contracts and (ii) contracts for production of minerals from strategic deposits. Rights to conduct other subsoil use operations (including: (i) exploration for all kinds of minerals; (ii) production of minerals from non-strategic deposits; (iii) all subsoil use operations with respect to common minerals, underground waters, therapeutic muds and underground constructions) would be granted on the basis of licenses. These licenses would be issued on the principle "first come – first served." However, tenders would be conducted for deposits with

[1] Please note that currently the Kazakhstan Parliament is considering draft amendments to the Law "On Subsoil and Subsoil Use", which we have not analyzed within the scope of this article.

commercial reserves and in cases with several applicants for exploration of the same site. It is proposed that the exploration term be eight years with two possible extensions for two years each. The term of production would not change and would remain 25 years for regular deposits and 45 years for unique deposits.

***Contract.*** The previous draft Concept intended to settle the frequent debates on the nature of the subsoil use contract: as to whether the contract is a civil law contract, or a public act, or whether it combines elements of both. In particular, the previous draft Concept envisaged that subsoil use contracts should be recognized as civil contracts; however, such contracts should not include provisions which are the subject of public law – e.g. taxation, protection of the subsoil and the environment, safety of population and personnel, stability guarantees, the state's right to acquisition and requisition, terms of conservation and liquidation, local content regulation, etc. (all of which would be matters to be regulated by the law, rather than contract). The current draft Concept does not address the issue of categorization of subsoil use contract at the same level. At the same time it is mentioned in the Concept that most contracts executed after adoption of the 2010 Law on Subsoil and Subsoil Use copy the model contract, whereas a contract should be an effective instrument for protection of investors' rights, and investors should have more freedom in determining the contractual terms taking into consideration the committed volume of their investment obligations. Thus, we understand that the developers of the Concept recognize the importance of civil law principles in subsoil use contracts.

***Limitation of state's priority right.*** It is planned that the state's priority right to acquire subsoil use rights and objects related thereto upon alienation would be limited only to deposits of strategic significance and only with respect to deposits at the stage of production. The Subsoil Code would determine the criteria of strategic significance (which could be category of minerals, volume of reserves, and term of developments). The creation of a pledge (encumbrance) of subsoil use rights by way of security would be permitted without prior state approval (an obligation to notify the authorities would remain).

***Investor oriented guarantees.*** According to the draft Concept, the Subsoil Code would provide guarantees for the recovery of investment at the stage of production.

Also, as follows from the draft Concept, the Subsoil Code would provide guarantee of legislative stability for at least 10 years. However, such stability would not include stability of tax rates.

***Taxation issues.*** Although taxes would not be stabilized, the draft Concept provides the following proposals on improvement of the taxation system of subsoil users: (i) subscription bonus and historical costs payments must be excluded from tax legislation, since they are paid only once, and are not of a fiscal nature; (ii) the commercial discovery bonus must be cancelled, since it is perceived as penalty for successful exploration; (iii) the tax legislation should allow full amortization of fixed assets during the last 3 years of the term of a subsoil use right, which is currently not regulated; (iv) during the exploration stage there should be tax holiday for property and land taxes, and no VAT on turnover, since subsoil users have no profit at this stage; (v) in case of unsuccessful exploration, there should be an opportunity to book the exploration expenses to the costs of another activity; (vi) tax legislation must provide a clear procedure for the booking of income and expenses to subsoil use operations, since currently the ambiguity of the law often leads to recalculation of taxes and imposition of fines; (viii) the taxation on production of associated minerals must be framed, since currently it is not clear which associate minerals are subject to taxation; (ix) exported oil and gas condensate should not be subject to rent payments, since it duplicates the exports customs payment and in essence leads to double taxation.

***Arbitration.*** The draft Concept proposes introducing into the Subsoil Code provisions expressly providing for subsoil users' right to arbitrate disputes with Kazakhstan State in international arbitration institutes. Such right would be introduced for both foreign and local subsoil users. Resolution of disputes on common minerals and underground waters would be allowed in local arbitration tribunals. In this regard, the newly granted licenses and contracts would include an arbitration clause. The draft Concept proposes that the right to select the arbitration institute would belong to the subsoil user regardless of whether such subsoil user is a claimant or a respondent in a dispute.

***Free access to geological information.*** In soviet Kazakhstan, geological information was not treated as confidential or secret (except for a few categories of information marked as secret), and geological funds (libraries) were in open access; thus anybody could review and copy geological information from such funds. In 1992, after adoption of the first subsoil code of independent Kazakhstan, geological information was recognized as an object of property, protected by law. Since then the state as the owner of geological information discloses geological information to subsoil users strictly on a contractual (and chargeable) basis. The developers of the Concept propose that access to geological information should be free again. This would be implementation of the transparency principle which would allow investors to study background information on opportunities of certain Kazakhstan deposits prior to making the decision to invest. Apart from geological information it is proposed that the following information be made publicly available: all decisions of the competent authority, contracts, licenses, permits, approvals and any decisions on the grant, amendment or termination of subsoil use rights.

The revised draft Concept of the Subsoil Code is now indeed progressive and envisages various provisions for removal of unnecessary bureaucracy and protection of investors' interests in the area of subsoil use. It is hoped that these positive changes will pass the legislative process, and the law will become more friendly to subsoil users.

Aigoul Kenjebayeva
Managing Partner

Bakhyt Kadyrova
Associate

# List of agreements and conventions regarding international legal assistance entered into by the Republic of Kazakhstan

| No. | Name, venue and date | Document of the Republic of Kazakhstan regarding joining / approval / ratification or other information |
|---|---|---|
| | Agreement on Legal Assistance and Interaction of Customs Bodies of Party States of the Customs Union regarding Criminal Cases and Cases on Administrative Violations, Astana, July 5, 2010 | RK Law No. 511-IV dated December 14, 2011 |
| | Agreement between the Republic of Kazakhstan and the Turkish Republic on Legal Assistance regarding Criminal Cases and Extradition, Almaty, August 15, 1995 | RK Law No. 367-I dated April 6, 1999 |
| | Agreement between the General Prosecutor's Office of the Republic of Kazakhstan and the General Prosecutor's Office of the Republic of Tajikistan regarding Legal Assistance and Cooperation, Astana, April 26, 2007 | Upon signature |
| | Agreement between the Republic of Kazakhstan and the Republic of Azerbaijan on Legal Assistance regarding Civil Cases, Almaty, June 10, 1997 | RK Law No. 387-I dated May 20, 1999 |
| | Agreement between the Republic of Kazakhstan and the Republic of Uzbekistan on Legal Assistance and Legal Relations on Civil, Family and Criminal Cases, Almaty, June 2, 1997 | RK Law No. 229-I dated May 8, 1998 |
| | Agreement between the Republic of Kazakhstan and Turkmenistan on Legal Assistance and Legal Relations on Civil and Family Cases, Almaty, February 27, 1997 | RK Law No. 311-I dated December 10, 1998 |
| | Agreement between the Republic of Kazakhstan and the Turkish Republic on Legal Assistance regarding Civil Cases, Almaty, June 13, 1995 | RK Law No. 180-I dated October 31, 1997 |
| | Agreement between the Republic of Kazakhstan and the Republic of Lithuania on Legal Assistance and Legal Relations on Civil, Family and Criminal Cases, Vilnius, August 9, 1994 | RK Law No. 292-I dated November 9, 1998 |
| | Agreement between the Republic of Kazakhstan and the People's Republic of China on Legal Assistance for Civil and Criminal Cases, Beijing, January 14, 1993 | Decree of the President of the RK No. 2309 dated May 30, 1995v |
| | Convention on Legal Assistance and Legal Relations on Civil, Family and Criminal Cases, Kishinev, October 7, 2002 | RK Law No. 531-II dated March 10, 2004 |
| | Convention on Legal Assistance and Legal Relations for Civil, Family and Criminal Cases, Minsk, January 22, 1993 | Resolution of the RK Supreme Council No. 2055-XII dated March 31, 1993 |
| | Agreement between the Republic of Kazakhstan and United Arab Emirates on Mutual Legal Assistance regarding Criminal Cases, Abu Dhabi, March 16, 2009 | RK Law No. 492-IV dated November 15, 2011 |
| | Agreement between the Republic of Kazakhstan and Republic of Korea on Mutual Legal Assistance regarding Criminal Cases, Seoul, November 13, 2003 | RK Law No. 453-IV dated July 8, 2011 |
| | Agreement between the Republic of Kazakhstan and the Republic of India on Mutual Legal Assistance regarding Criminal Cases, New Delhi, August 17, 1999 | RK Law No. 49-II dated May 17, 2000 |
| | Agreement between the Republic of Kazakhstan and the Democratic People's Republic of Korea on Mutual Legal Assistance regarding Civil and Criminal Cases, Pyongyang, April 7, 1997 | RK Law No. 291-1 dated November 9, 1998 |
| | Agreement between the Republic of Kazakhstan and Georgia on Mutual Legal Assistance regarding Civil and Criminal Cases, Tbilisi, September 17, 1996 | RK Law No. 119-III dated January 14, 2006 |
| | Agreement between the Republic of Kazakhstan and the Islamic Republic of Pakistan on Mutual Legal Assistance regarding Civil, Family and Criminal Cases, Almaty, August 23, 1995 | RK Law No. 293-1 dated November 9, 1998 |
| | Convention between the Republic of Kazakhstan and the Kingdom of Spain on Mutual Legal Assistance regarding Criminal Cases, Astana, June 17, 2011 | RK Law No. 45-V dated October 19, 2012 |
| | Agreement between the Republic of Kazakhstan and Mongolia on Mutual Legal Assistance regarding Civil and Criminal Cases, Ulan Bator, October 22, 1993 | Resolution of the RK Supreme Council dated June 22, 1994 |

# Anticipated legislative changes in intellectual property law

Intellectual property law of the Republic of Kazakhstan is undergoing changes due to Kazakhstan's membership in various international and regional organizations, as well as the need to consider the legislation in the context of IT development in the country and general IT penetration in society.

The lower chamber of the Parliament, the Mazhilis, has accepted the draft Law on Amendments to Certain Legislative Acts of the Republic of Kazakhstan Concerning the Regulation of Intellectual Property ("Draft Law") for consideration.

Almost all normative legal acts concerning intellectual property will be affected by the proposed amendments, including:

1. Republic of Kazakhstan Law on Trademarks, Service Marks and Designations of Origin of Goods dated 26 July 1999 ("Trademark Law");
2. Republic of Kazakhstan Patent Law dated 16 July 1999 ("Patent Law");
3. Republic of Kazakhstan Law on Copyright Rights and Neighboring Rights dated 10 June 1996 (the "Copyright Law");
4. Republic of Kazakhstan Civil Code (Special Part) dated 1 July 1999 ("RK CC").

Below we briefly address the most significant of the proposed amendments to the above regulatory acts.

## 1. Amendments to the Trademark Law

### Registration of trademarks

The amendments to the Trademark Law concern, in particular, the establishment of terms for all stages of trademark application examinations.

The list of statutory grounds for refusal to register a trademark has been amended. An association with goods and services is to be removed from the list of statutory grounds for denying trademark registration. This ground is currently actively used by the Patent Office to deny the registration even of trademarks which allow products and services of one producer to be differentiated from another producer on a particular market. If this amendment is adopted, it is envisaged that the number of trademark registrations being accepted without prior refusal will increase. This will affect the duration of the trademark registration process and directly reduce applicants' costs.

The Trademark Law intends to describe the meaning of such concepts as "identical trademarks," "confusingly similar trademarks," and "homogenous goods and services." The description of such concepts must minimize the scope for a subjective approach by experts during their examination, and will contribute to the development of uniform practice in trademark registration and cases of infringement of trademark rights.

### Invalidation of a trademark due to non-use

It has been proposed that the definition of "use" of a trademark should be amended for the purpose of the invalidation procedure for non-use of a trademark, in particular, to exclude the transfer of rights to a trademark from the list of actions that are recognized as use of a trademark. This amendment aims to exclude the option of recognizing nominal use of a trademark where customers see no goods with a particular trademark in circulation. This amendment, in our view, will remove the ability of trademark owners to abuse a trademark right. However, it is not clear in this case if "the transfer of rights to a trademark" covers assignment of rights to or license of a trademark.

### Agreement assigning the right to a trademark application

One important amendment is that applicants will not need to register an agreement assigning the right to a trademark application. Registration of these agreements will be replaced by a notification procedure. This amendment has been made in order to simplify the procedure for amending an application in connection with a change of the applicant. Please also note that the amendments to the Trademark Law are aimed at implementing the Singapore Treaty on the Law of Trademarks adopted on 27 March 2006 ("STLT"). Kazakhstan ratified the STLT on 8 April 2012. The STLT came into force for the Republic of Kazakhstan on 5 September 2012. The STLT establishes common standards for procedural aspects of trademark registration and licensing. One of the advantages of the STLT is that the parties to license agreements are not obliged to file the agreement for registration. Simply filing an application for registration of a license agreement is sufficient. Despite the fact that

Kazakhstan ratified the STLT, its norms are not yet applied in practice, and applicants cannot yet make use of all the positive aspects of the STLT. We expect that Patent Office practice may change after the adoption of the Draft Law.

## 2. Amendments to the Patent Law

### Inventions

The amendments to the Patent Law provide for the abolition of innovation patents with respect to inventions. Innovation patents are currently issued in addition to patents for inventions. Patents are issued for inventions provided that they are new and have a degree of inventiveness and industrial application, whereas innovation patents are issued for inventions filed without examination of these patentable features. The abolition of the innovation patent as a protective document from the patent system will cease the unfair practice of patenting world-famous inventions in Kazakhstan and further use of such innovation patents to claim infringement of patent rights in Kazakhstan.

### Utility models

The amendments to the Patent Law expand the definition of a utility model. The Patent Law currently establishes that only products that are deemed 'devices' can be protected as utility models. Should the Draft Law be adopted, other results of intellectual work will also be included in the definition of utility model, such as products in the form of substances, strains of microorganisms, new breeds of plants or animal cells, processes and technical decisions in any area related to the application of a known product or process for a new purpose or a new product for a particular purpose.

This amendment will ensure that technical solutions with a lower level of invention will not be without proper protection. Contrary to inventions, utility models are protected if they only include prior art or industrial applicability features. There is no requirement for utility models to include an inventive step as seen in patents.

## 3. Amendments to the Copyright Law

### Property rights of authors

The principal amendments to the Copyright Law are intended to increase control over the activities of organizations managing property rights on a collective basis, including additional obligations for such organizations. If the amendments are adopted, organizations will be required to publish reports in the media every six months containing, in particular, information on collected, uncollected, distributed, non-distributed, paid an unpaid royalties. Organizations will also be required to publish information on agreements entered into with IP users through Internet resources.

## 4. Amendments to the RK CC

A rule on mandatory state registration of franchising agreements is to be added to the RK CC. The Draft Law proposes an express provision that franchising agreements are subject to registration with respect to intellectual property for which rights arise upon registration. The proposed amendment to the RK CC is not a new provision, it is intended to remove contradictions between the RK Law on Franchising and laws on various kinds of intellectual property.

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A draft law considered and approved by a majority of the total number of deputies of the Mazhilis will be transferred to the Senate where it must be considered for no more than 60 days from the date of receipt. If it is adopted by a majority of the total number of deputies of the Senate, the draft will be submitted to the President for signature, who will sign a law submitted by the Senate within one month. According to the Draft Law, the signed law will enter into force ten calendar days after the date of its first publication. Therefore, we can expect that the new versions of normative legal acts concerning intellectual property will come into effect only in 2015.


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Nataliya focuses on 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.

Aliya Seitova
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Aliya focuses on intellectual property law. She assists clients in drafting and negotiating agreements on transfer of rights to use intellectual property, assignment and registration of intellectual property objects.

# 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 Organization (WIPO) Convention | December 25, 1991/ Declaration of continued application – February 16, 1993 | The constituent instrument of the World Intellectual Property Organization |
| **IP protection** This group of treaties defines the internationally agreed basic standards of intellectual property protection in each country. | Berne Convention for the Protection of Literary and Artistic Works, 1886 | April 12, 1999 | Copyright items |
| | 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, trademarks, trade names (designations under which an industrial or commercial activity is carried out), geographical indications (indications of source and appellations of origin). The agreement covers provisions related to of unfair competition |
| | Patent Law Treaty, 2000 | October 19, 2011 | Inventions |
| | Convention for the Protection of Producers of Phonograms against Unauthorized 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 items |
| | WIPO Performances and Phonograms Treaty, 1996 | November 12, 2004 | Related rights items, namely phonograms and performances |
| | Singapore Treaty on Trademark Law, 2006 | September 5, 2012 | Trademarks |

| Group of treaties | Treaties | Entry into force | Intellectual property covered |
|---|---|---|---|
| **Global protection system** This group of treaties ensures that one international filing can be further transferred to the relevant signatory states for substantive examination based on which the decision on grant of protection is rendered by each signatory state (except Eurasian Patent Convention according to which one title document is valid in all member-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. | 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** This group of treaties consists of classification treaties which create classification systems that organize information concerning inventions, trademarks and industrial designs into indexed, manageable structures for easy retrieval. | 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 |

# New Law on Permits and Notifications

Kazakhstan enacted the Law on Permits and Notifications (the "Law") which will come into force on 21 November 2014. The main stated objective of the Law, which will replace the Licensing Law dated 11 January 2007, is unification and simplification of the current system of permits (licenses, permits and notifications) and reducing their number.

Kazakhstan enacted the Law on Permits and Notifications (the "Law") which will come into force on 21 November 2014. The main stated objective of the Law, which will replace the Licensing Law dated 11 January 2007, is unification and simplification of the current system of permits (licenses, permits and notifications) and reducing their number.

The Law provides general principles and guidance related to permits, but Government decrees and other normative legal acts will still continue to regulate the actual procedures, lists of required documents and qualification requirements.

## Novellas

The Law introduces the following novellas:

- Exhaustive list: The appendices to the Law provide for an exhaustive list of permits and notifications. After the Law becomes effective, State bodies may not require individuals and legal entities to obtain permits and make notifications, other than those which are listed in the Appendices to the Law (other than those mentioned in paragraph 'Exceptions' below).

- One window: If the issuance of a permit requires obtaining a prior approval (or an accompanying permit) from another state authority to confirm the applicant's compliance with certain requirements, the permitting authority shall apply to such other state authority for obtaining the said approval (or an accompanying permit). This is a major introduction as it releases the applicant from having to obtain such ancillary permits and approvals and imposes this duty on the permitting authorities. Furthermore, the Law also provides for a possibility to receive a permit or notification through any public service center regardless of its location, except for permits and notification in the sphere of finances and activities related to concentration of financial resources.

- Deemed approval: An applicant may assume that a permit is granted if the authorized body does not respond (grant or deny the permit) within a period stipulated by the Law. In such case the authorized body is obliged to issue the permit within five business days following the expiry of the time period for issuing the permit. If the authorized body fails to issue the permit within five business days, a document confirming receipt of the application for a permit shall serve as proof of legitimacy of the relevant activity until the issuance of the permit. It should be noted however that this principle shall not apply to the permits listed in Appendices 1 and 2, which have respective notes (e.g., license for works connected with nuclear energy objects; license on manufacturing of narcotic drugs, etc.);

- Preliminary assessment on necessity of permit: The Law imposes an obligation on state authorities to provide official clarification on whether or not a permit is required for carrying out certain categories of activity, actions or operations. This presents a very useful tool for market entities as very often there is doubt as to whether a permit is required in specific circumstances. While previously a potential applicant could also submit a request for clarification, in practice state authorities often provided ambiguous responses or required submission of a formal application with all the supporting documents, etc. which effectively meant a refusal to grant a preliminary assessment.

## Application by foreign applicants

The Law clarifies that foreign applicants shall submit similar documents as Kazakhstan applicants, and may apply, make payments and fees necessary to obtain a permit, provided they have obtained a personal business identification number, or they may use the details and business identification numbers of their local branch and/or representative office. Previously, there was a lack of clarity as to whether a foreign entity could apply for certain types of permits.

## Classification of permits

The Law provides for classification of permits depending on their target and the following classes are being introduced: permits issued for activity (Class I), permits issued for objects (Class II), one-time permits (Class III), permits issued for activity with 'limited resources' or using quotas (Class IV), permits issued for professional activity of persons (Class V) and permits issued in respect of products (Class VI). There are different 'regimes' introduced for each of these classes, e.g. please see our comments on 'permits issued for objects' in the next paragraph.

## Permits related to construction

The Law maintains the licensing requirement with regard to architecture, town planning and construction activity, but introduces some novellas in terms of their further detailing. Particularly, special licensing conditions are still governed by the Law on Architecture, Town Planning and Construction

Activity ("Construction Law"). License categories (I, II and III) must be defined in annexes to the license as per the Construction Law depending on the criticality level of the facility to be designed or constructed.

Subtypes of activities both for construction and installation works and for design activity are now listed in Appendix 1 and remain exactly the same as currently contemplated in the Licensing Law. We therefore understand that there is no need to make any additional actions to maintain their validity. All design/construction licenses which were issued before the enactment of the new Law remain valid after its enactment on November 11, and no actions are to be taken by licensee's in their respect as well.

Previously, there was a gap in the law as to whether permits required for construction attach to the land, i.e. remain valid after the land has been transferred to a new owner. In practice, often such permits used to remain valid, and the authorities acknowledged their validity after such a transfer, provided there was no change in the design/construction parameters. However, this was not supported by sufficient legal basis and sometimes authorities could question the validity of a certain permit and require the new owner to obtain a new one. The Law now introduces a new class of 'permits issued for objects.' From our reading, we understand that permits within this class are attached to the land, and they should remain valid even if a project land plot is transferred from one entity to another.

The Law provides that in case of a change in the name of a category and/or sub-category of an activity, a licensee has the right to submit an application for reissuance of the licence and/or annex to the licence; the law does not impose an obligation to apply for reissuance of licence or annex to the licence in this case. Although reapplication is drafted as a right but not an obligation, it remains to be seen whether a potential discrepancy between the activities' names under the Law and the names indicated in the licences issued prior to its enactment might cause any practical issues.

## Exceptions

Finally, the Law expressly states that it has no effect with regard to (1) permits set forth by the Technical Regulation Law and not included in Appendices 1 and 2 of the Law, (2) state registration/de-registration of legal entities and branches/representative offices, (3) registration of currency operations, notifications on currency operations and bank account opening as per the Currency Regulation and Currency Control Law, (4) state registration of securities issuances according to the Securities Market Law, (5) notifications of securities issuers and financial organizations in the course of financial activity and activity, associated with financial resources concentration, (6) permits not included in Appendix 2 and set forth by the State Border Law, (7) actions of the natural monopoly authority related to regulation of tariffs for natural monopolies and (7) permits defined by the State Secrets Law.

Accordingly, in addition to the permits listed in the Law markets, entities should continue to consult the legislation covering the aforementioned matters and areas.


### Birzhan Zharasbayev
Partner

Birzhan's experience includes construction and real estate, infrastructure and PPP, M&A and 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. Birzhan provided advice on a number of draft laws and acted as a leading co-drafter of Kazakhstan's legislation on Islamic banking and finance.



### Ruslan Nurbekov
Senior Associate

Ruslan focuses on commercial issues, mergers and acquisitions, insurance and oil and gas projects. He has advised on various aspects of the creation of a railway plant, several major M&A transactions, IPO of Kazakhstan assets on AIM LSE and creation of joint ventures with government controlled entities.



### Almas Zhaiylgan
Partner

Almas heads the Firm's Energy and Natural Resources practice in Kazakhstan. He has more than 17 years' 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. *Chambers Global 2013* notes that he really "knows his stuff" and "can express legal views cogently".

# Kazakhstan: double taxation 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 (percent) | Interest (percent) | Royalties (percent) | Net income tax (percent) |
|---|---|---|---|---|---|
| | | | | | |
| 1 | Armenia | 10 | 10 | 10 | 5 |
| 2 | Austria | 5/15 | 10 | 10 | 5 |
| 3 | Azerbaijan | 10 | 10 | 10 | 2 |
| 4 | Belarus | 15 | 10 | 15 | 5 |
| 5 | Belgium | 5/15 | 10 | 10 | 5 |
| 6 | Bulgaria | 10 | 10 | 10 | 10 |
| 7 | Canada | 5/15 | 10 | 10 | 5 |
| 8 | China | 10 | 10 | 10 | 5 |
| 9 | Czech Republic | 10 | 10 | 10 | 5 |
| 10 | Estonia | 5/15 | 10 | 15 | 5 |
| 11 | Finland | 5/15 | 10 | 10 | 5 |
| 12 | France | 5/15 | 10 | 10 | 5 |
| 13 | Georgia | 15 | 10 | 10 | 5 |
| 14 | Germany | 5/15 | 10 | 10 | 5 |
| 15 | Hungary | 5/15 | 10 | 10 | 5 |
| 16 | India | 10 | 10 | 10 | 10 |
| 17 | Iran | 5/15 | 10 | 10 | 5 |
| 18 | Italy | 5/15 | 10 | 10 | 5 |
| 19 | Japan | 5/15 | 10 | 10 | 0 |
| 20 | Korea | 5/15 | 10 | 10 | 5 |
| 21 | Kyrgyzstan | 10 | 10 | 10 | 10 |
| 22 | Latvia | 5/15 | 10 | 10 | 5 |
| 23 | Lithuania | 5/15 | 10 | 10 | 5 |
| 24 | Luxembourg | 5/15 | 10 | 10 | 10 |
| 25 | Malaysia | 10 | 10 | 10 | 10 |
| 26 | Moldova | 10/15 | 10 | 10 | 5 |
| 27 | Mongolia | 10 | 10 | 10 | 10 |
| 28 | Netherlands | 5/15 | 10 | 10 | 5 |
| 29 | Norway | 5/15 | 10 | 10 | 5 |
| 30 | Pakistan | 12.5/15 | 12.5 | 15 | 15 |

| | Payee resident in | Dividends (percent) | Interest (percent) | Royalties (percent) | Net income tax (percent) |
|---|---|---|---|---|---|
| 31 | Poland | 10/15 | 10 | 10 | 10 |
| 32 | Romania | 10 | 10 | 10 | 15 |
| 33 | Russian Federation | 10 | 10 | 10 | 10 |
| 34 | Singapore | 5/10 | 10 | 10 | 5 |
| 35 | Slovakia | 5/10 | 10 | 10 | 5 |
| 36 | Spain | 5/15 | 10 | 10 | 5 |
| 37 | Sweden | 5/15 | 10 | 10 | 5 |
| 38 | Switzerland | 5/15 | 10 | 10 | 5 |
| 39 | Tajikistan | 10/15 | 10 | 10 | 10 |
| 40 | Turkey | 10 | 10 | 10 | 10 |
| 41 | Turkmenistan | 10 | 10 | 10 | 5 |
| 42 | UAE | 5/15 | 10 | 10 | 5 |
| 43 | Ukraine | 5/15 | 10 | 10 | 5 |
| 44 | United Kingdom | 5/15 | 10 | 10 | 5 |
| 45 | United States | 5/15 | 10 | 10 | 5 |
| 46 | Uzbekistan | 10 | 10 | 10 | 15 |

**Tax Treaties not yet in force**

| | | | | | |
|---|---|---|---|---|---|
| | Macedonia* | 5/15 | 10 | 10 | 5 |
| | Vietnam* | 5/15 | 10 | 10 | 5 |
| | Croatia* | 5/10 | 10 | 10 | 5 |
| | Kuwait* | 0/5 | 10 | 10 | 0 |
| | Saudi Arabia* | 5 | 10 | 10 | 0 |
| | Serbia* | 10/15 | 10 | 10 | 10 |
| | Slovenia* | 5/15 | 10 | 10 | 5 |
| | Qatar* | 5/10 | 10 | 10 | 10 |

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

# A short historical analysis of the development of the legislative framework for public-private partnerships (PPP) in Kazakhstan

While the Republic of Kazakhstan does not currently have a special (dedicated) law on public-private partnerships ("PPP"), recent legislation has generally allowed the development, launch and implementation of PPP-type projects. However, the adoption of a new law specifically devoted to PPP which would combine, define and expand the PPP instruments from different legislative acts could allow Kazakhstan legislation to establish in the country a solid base for the launch of genuine PPP projects. To illustrate this conclusion, we will first take a look at the legislative framework for PPP in Kazakhstan from 2006 to 2013. We will then see how this situation changed in 2013, and then 2014. Finally, the prospects and plans for further development of PPP legislation in Kazakhstan will be considered.

## 1. PPP legislation in Kazakhstan from 2006 to 2013

The main legislative acts governing PPP in Kazakhstan from 2006 to mid-2013 were as follows:[1]

- Civil Code RK
- Budget Code RK
- Tax Code RK
- RK Law on Concessions
- RK Law on State Property
- RK Law on Project Financing and Securitization
- RK Law on Natural Monopolies and Regulated Markets.

From the above list, the RK Law on Concessions was (and remains to be) the fundamental and most significant law for PPP in Kazakhstan. This law was adopted in 2006 and at that time set out the conditions and procedure for concluding, performing and terminating concession agreements, as well as establishing certain guarantees and measures of state support that might be provided to concessionaires.

It can reasonably be concluded that, on the basis of the then effective RK Law on Concessions, only one legal form of PPP was possible in Kazakhstan from 2006 until mid-2013, i.e., a concession on a Build-Transfer-Operate basis.[2]

At the time, the definition of "concession" included: (1) "transfer of state property into temporary possession and use under a concession agreement for the purpose of the improvement and effective operation thereof," and (2) "transfer of rights to create (build) new property using the concessionaire's funds, or with co-financing from the grantor, with the subsequent transfer of such property to the state with the granting to the concessionaire of rights of possession and use for subsequent operation."

Before mid-2013, the legal characteristics of "concession" did not fully meet the parameters which international investors and private operators would like to see for PPP projects in Kazakhstan.

First, the term "concession" applicable at that time significantly limited the scope of PPP.

Second, the concessionaire was unable to obtain sufficient financing from the state. In particular, this was reflected in: (a) the absence of an "availability payment" (b) limited cases of reimbursement of operating costs (only in socially-significant projects), (c) an overall limit on state support (to the value of the concession facilities built at the concessionaire's expense), (d) a complex procedure for obtaining state guarantees and other factors.

Third, PPP in Kazakhstan was insufficiently attractive to banks (for example, pledge of the concession property was prohibited, there was uncertainty whether the concessionaire's rights under the concession agreement could be pledged, etc.).

Fourth, concessionaires that were natural monopolies faced difficulties and uncertainties in approving long-term tariffs with indexation mechanisms. There were also various tax and customs burdens which would make it reasonable not to apply for concession projects.

Fifth, the concessionaire selection process was excessively complex and inefficient, and there was no pre-qualification stage.

[1] This is not an exhaustive list, as the full legislative framework for the structuring and implementation of a particular PPP project in Kazakhstan could have been significantly broader.

[2] For the sake of objectivity, from 2006 to mid-2013 it was in theory possible to use a framework other than a concession for a PPP project (for example, using the provisions of laws related to trust management, lease, or consortium). Such non-concession relations, however, did not have clear legal regulation, or faced other legislative and practical obstacles that did not exist or were less of an impediment for concession projects (e.g., taxes, tariffs, compensations, etc.). As a result, in the period 2006 – 2013, there have been no "non-concession" projects that could be regarded as PPP or quasi-PPP projects.

Sixth, there was significant legislative uncertainty with respect to the right of foreign investors and operators to resolve disputes relating to concession projects through an international commercial arbitration.

The above reasons, combined with other limitations and difficulties in Kazakhstan law, meant that, despite the existence of a special law, there was no boom in concession projects in Kazakhstan. Accordingly, Kazakhstan's infrastructure and social sectors did not see the desired influx of private knowledge and investment. Furthermore, the few concession projects that were launched in this period either failed to meet their targets or reached them subject to considerable conditions.[3]

## 2. PPP legislation since mid-2013

Given that the earlier effort to develop concession projects in Kazakhstan was largely a failure, in 2012 the Kazakhstan Government began substantial work as directed by a special instruction of the Kazakhstan President to draft a Law on New Forms of PPP in Kazakhstan ("Law on New Forms of PPP"). After long discussions and debates, the Kazakhstan Parliament finally approved this Law in July 2013.[4]

In general, the Law on New Forms of PPP significantly improves and broadens the legal field governing relations between the state and private sector in PPP.

First, this Law amended the definition of "concession." According to the new definition, "concession" means activities intended to build/renovate and operate concession facilities conducted at the expense of the concessionaire or on the basis of co-financing by the concessionaire." Unlike the previous definition, the new definition of concession does not specify the owner of the concession property.

Second, and more importantly, the Law on New Forms of PPP provides a legislative framework for various kinds of "concession agreement." These include, in particular:

- A concession agreement providing for the concessionaire to build the concession facility with subsequent transfer of the concession property to the state.
- A concession agreement providing for the joint activities of the concessionaire and grantor to build/renovate and operate the concession facility.
- A concession agreement providing for transfer of a concession facility to the concessionaire under trust management or lease for the purpose of renovation and operation.
- A concession agreement providing for the transfer of a concession facility owned by the concessionaire under lease to the grantor or its designated person, including with the grantor's right to purchase the concession facility.

At the same time, the new Law clearly states that the concession agreement may include elements of one or several of the above forms of agreements, and may also include elements of other agreements not prohibited by Kazakhstan law. Therefore, the legal framework for concessions in Kazakhstan can now combine any civil-law relations, provided that these relations are intended to build or renovate and then put concession facilities into operation. This significantly broadens the potential playing field for use of concessions in PPP projects, and brings Kazakhstan closer to respective international standards.

Third, for the first time in Kazakhstan legislation, the Law on New Forms of PPP introduces a definition of "PPP". According to this definition, "PPP is cooperation between the state and private enterprise for the purpose of financing, building, renovating and/or operating social infrastructure and utilities". Also for the first time in Kazakhstan the said Law establishes the principles of PPP and distinguishes between "institutional" and "contractual" PPP. [5]
Fourth, the Law on New Forms of PPP expands the list of sources from which the concessionaire may obtain income or compensation of its expenses. For example,

[3] For more detail please refer to publicly available information on the following projects: (1) construction and operation of the Shar Station – Ust-Kamenogorsk railway; (2) construction of the North Kazakhstan – Aqtobe Oblast interregional power line; and (3) construction of a passenger terminal at Aqtau Airport.

[4] The full title of the Law is RK Law No.131-V "On Amendments to Certain Legislative Acts of the Republic of Kazakhstan for the Introduction of New Forms of Public-Private Partnership and Expansion of the Scope of Application Thereof" dated 4 July 2013.

[5] The principles of PPP in Kazakhstan include: (1) consistency, (2) competitiveness, (3) balance and (4) effectiveness.

the provisions under which concessionaires will only be compensated in socially-significant projects have been removed. The institution of "availability payments" has also been introduced for the first time.

Fifth, it has been established that, subject to the grantor's written consent, the concessionaire has the right to pledge its rights under the concession agreement or to assign its rights and obligations under the said agreement in the event of an assignment of receivables or debt.

Sixth, the new Law establishes a two-stage tender procedure for selecting concessionaires, thereby splitting the consideration of the best technical (design) and best financial proposals into two stages.

## 3. Amendments into the RK Law on Concessions made in 2014

The Law on New Forms of PPP considerably improves the legislative framework for PPP in Kazakhstan. Nevertheless it does not address all issues which are important for potential private investors and operators. Thus, in July 2014, the Kazakhstan Parliament approved further amendments to the RK Law on Concessions ("2014 Amendments").[6]

In particular, the 2014 Amendments stipulate that, under an "especially important concession project":

- A concession agreement may stipulate provisions for its unilateral termination due to (a) an essential breach by the grantor and/or the concessionaire of their respective obligations , and/or (b) the occurrence of a force majeure event.
- The grantor, the concessionaire, and the creditors of the concessionaire shall be entitled to enter into a "direct agreement", which will inter alia stipulate the creditors' step-in rights.
- If at least one shareholder/participant of the concessionaire is a non-resident of Kazakhstan, then the parties to the concession agreement shall be entitled to submit disputes arising from the concession agreement to international arbitrage nominated by such parties in such agreement.

We can conclude that (a) broadening of the scope of concession, (b) introduction of the term "PPP" into legislation, (c) improvements in state support, (d) ability of executing a "direct agreement," and (e) entitlement to settle disputes in international arbitration — all as set forth by the Law on New Forms of PPP and the 2014 Amendments — have substantially upgraded the legislative framework for PPP projects in Kazakhstan. It is expected, therefore, that there may be renewed interest from the private sector in projects in areas which traditionally have been considered the state's responsibility.

## 4. The future of PPP legislation in Kazakhstan

For the sake of objectivity, it should be noted that the Law on New Forms of PPP together with the 2014 Amendments have not solved all of the problems which prevent private or quasi-state sectors from entering the PPP area.

First, there is still a need to introduce additional forms of "contractual" PPP, which would go beyond a "concession regime". Second, there is a need to provide a more specific/obvious legislative basis for legal entities that operate under "institutional" PPP. Third, the framework for participation of "quasi-state" companies (such as national holdings, national companies and their subsidiaries) in PPP needs to be established. Finally, small scale/regional PPP projects should be subject to a less complicated/less burdensome regulatory regime.

Because of the drawbacks mentioned, the Kazakhstan Government has begun work on another law devoted exclusively to PPP – the RK Law on Public-Private Partnership ("PPP Law"). Although this work began back in 2013, even before the Law on New Forms of PPP was adopted, it has recently been intensified due to the issue of Resolution of the Kazakhstan President No.2276 dated 16 May 2014.

The purpose of the new PPP Law is to address the aforementioned drawbacks and ensure full regulation of all aspects of long term co-operation between state and business in small, medium and large scale PPP projects.

The draft of the new PPP Law is still in the pre-parliamentary discussion phase. It is therefore difficult to predict when, and in what form, the draft law will be submitted to the Kazakhstan Parliament. Nevertheless, based on available information, it can be argued that the adoption of the new PPP Law, which would combine, define and expand PPP instruments from different legislative acts and solve some other unclarified issues, may result in the establishment of a proper legislative framework to support the genuine small, medium and large scale PPP projects in Kazakhstan.

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[6] These changes have been introduced by the RK Law No.225-V "On Adoption of Changes and Additions into Certain Legislative Acts of the Republic of Kazakhstan On Matters Related to State Management" dated 2 July 2014.

# 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 19,966 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 forty 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 in 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 the 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 the agreement is terminated.

9 At hiring, the employer 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.

# New rules on procurement of goods, works and services dedicated for subsoil use operations

On 31 May 2014 the RK Government adopted Resolution No. 602 by which it approved a new version of the Rules for Procurement of Goods, Works and Services for Subsoil Use Operations (the "**Common Procurement Rules**") and the Rules for Procurement of Goods, Works and Services for Subsoil Use Operations Through the Use of the State Registry (the **"State Registry Procurement Rules**"). The Common Procurement Rules and the State Registry Procurement Rules (collectively the "**Procurement Rules**" or "**Rules**") replaced previous versions of the said Rules ("**Old Procurement Rules**").[1]

## 1. Why there are two rules: the Common Procurement Rules and the State Registry Procurement Rules

According to article 77.3 of the RK Law on Subsoil and Subsoil Use, dated 24 June 2010, as amended (the "Subsoil Law"), goods, works and services for subsoil use operations ("GWS") must be procured through the mandatory use of either: (i) online procurement system which is administered by the authorised state body (the "State Registry") or (ii) other online procurement systems which are administered by private companies ("Private Systems") provided, however, that such Private Systems comply with certain requirements.[2]

Correspondingly, there are two different procedures:

- The Common Procurement Rules regulate procurement through the private online procurement systems.
- The State Registry Procurement Rules regulate procurement procedures through the State Registry, accordingly.[3]

It should be noted that the Common Procurement Rules and the State Registry Procurement Rules are almost the same in substance.[4] In this regard, this article refers to the Procurement Rules together (i.e. without specifying the Common Procurement Rules or the State Registry Procurement Rules).

It is also worth noting that even though Private Systems are generally permitted, it is not clear whether such Private Systems are widely used.[5]

## 2. Scope of the Rules application

No changes have been made as compared to the previous editions in regard to the scope of application. The Procurement Rules apply to procurement of GWS by all companies engaged in subsoil use operations apart from companies:

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[1] The Old Procurement Rules were approved by the RK Government Resolution No. 133 and No. 134 dated 14 February 2013.

[2] The Private Systems must be located within the Kazakhstan part of internet (i.e. on the sites using Kazakhstan domain names and supported by infrastructure located in Kazakhstan) and have to be synchronised with the State Registry. The procedure of synchronisation includes verification that all data can be and will be duly transferred from the Private Systems to the State Registry.

[3] The Old Procurement Rules were also divided in two different procedures: for procurement through the State Registry and for procurement through the Private Systems.

[4] The difference relates to the fact that the State Registry Procurement Rules require publishing all documents in the State Registry while the Common Procurement Rules require publishing all documents in the Private System and, sometimes, in both the Private System and in the State Registry. There are only two cases when the State Registry Procurement Rules differ from the Common Procurement Rules in substance. In particular, in two instances the State Registry Procurement Rules envisage slightly different content of the minutes which have to be prepared in a course of procurement procedures. However, there are no differences in the procedures, per se.

[5] There are no available statistical data with regard to volume of GWS procured through the State Registry as compared to the volume of GWS procured through the private online procurement systems (or with regard to number of companies using different procurement systems). Moreover, even though it appears that a number of private online procurement systems have been developed for the last two years there is no official list of the Private Systems reconciled with the State Registry (i.e. the list of permitted Private Systems).

- Which conduct operations related to the exploration and production of common minerals [6]
- Which conduct subsoil use operations but fall under regulation by the legislation on procurement by state organisations and state companies.
- In which 50 percent or more of shares (participating interests) are held directly or indirectly by the National Welfare Fund.

### 3. Unified procedures for companies engaged in oil and gas activities and in mining activities

Unlike the Old Procurement Rules, the current Rules establish the same procurement procedure for companies involved in oil and gas operations and for companies involved in mining operations.

### 4. Restricted potential suppliers

Companies which wish to participate in the procurement procedures as potential suppliers of GWS ("Potential Suppliers") must fulfil the following criteria: be legally capable, be solvent and not be subject to a bankruptcy procedure.

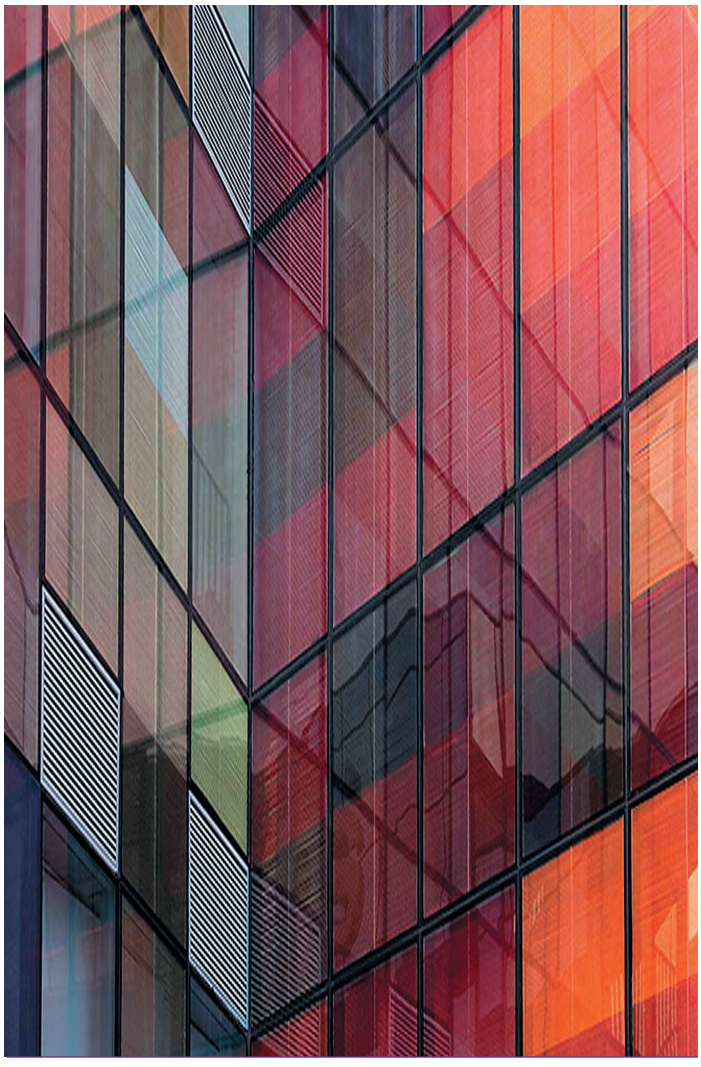
Further, the participation of a company in procurement is prohibited if: (i) the Potential Supplier and / or its employees advised a company which organises procurement of GWS ("Customer") about the planned purchase; (ii) there is a potential conflict of interest;[7] (iii) the Potential Supplier prepared a feasibility study for the Customer and / or designed technical design documentation for the Customer or acted as a subcontractor for development of a feasibility study or technical design documentation (the "Designing

[6] Common minerals include sand, salt, limestone and some other minerals; the full list is approved by the RK Government.

[7] The Rules prohibit a company to participate in a purchase if close relatives, husband (wife) or relatives by marriage of managers ('rukovoditelei') of the said Potential Supplier and (or) of the authorized representative of the said Potential Supplier have a right to pass a decision on the selection of a supplier or they are employees of the Customer.

[8] Definition of affiliated entities by the Procurement Rules is close to the definition provided by the RK Law on Limited and Additional Liability Partnerships, dated 20 April 1998, as amended.

[9] Translation to other languages can be requested by a Customer as an additional requirement.



[10] Here and below, in case of procurement with use of a Private System, all documents are published/ downloaded into such Private System.

[11] A general rule is that in case a Customer needs to procure GWS which are different by their nature (e.g. goods which have different technical characteristics) or GWS should be delivered to / performed at different locations, then, the Customer may split such GWS on several lots (instalments) and procure such GWS through several lots (instalments) under one tender process.

[12] In 2014 1 MCI is equal to 1,852 Tenge (about US$100).

[13] A general rule is that a Customer cannot establish qualification criteria with regard to tender participants in addition to the criteria imposed by the Procurement Rules. Tender documentation prepared by the Customer may establish qualification criteria for GWS but not for the Potential Suppliers.

[14] Security can be provided, at the Potential Supplier's discretionary decision, either as a bank's guarantee or as a deposit paid to the Customer's account. The size of security has not been changed: it is not more than 1 percent of the amount allocated by the Customer for procurement in accordance with the Customer's tender documentation.

Companies") and (iv) operations of the Potential Supplier or its subcontractors are suspended in accordance with the applicable legislation. The current Procurement Rules, however, permit the Designing Companies to participate in a procurement procedure when the Customer is a mining company and it procures "turn-key" work or services. The exemption does not apply to the oil and gas industry.

Finally, companies are restricted from submitting more than one bid both directly and indirectly. The Procurement Rules prohibit simultaneous participation of two or more affiliated companies[8] in a procurement procedure unless such companies establish an unincorporated partnership and participate together as one Potential Supplier. Further, a company cannot submit a bid if it participates in procurement as a member of an unincorporated joint venture or consortium.

## 5. Language requirements

Under the Old Procurement Rules, there were a number of questions concerning the legal interpretation and practical implication of the provisions related to language(s) of the documentation prepared in a course of procurement. There was uncertainty because from a legal point of view one could argue that the Customer's tender documentation and the Potential Suppliers' tender bids should be prepared in either Russian or Kazakh.[9] At the same time, written and oral clarification by the State officials suggested that all documents must be developed in both Kazakh and Russian languages. The uncertainty of legal provisions was eliminated by the Procurement Rules. The Procurement Rules specifically indicate that that all documents related to procurement, including bids of the Potential Suppliers must be in both Russian and Kazakh languages with attachment of translations to other languages, if required by a Customer.

## 6. Publishing of procurement programmes in the State Registry

The Procurement Rules oblige Customers to publish their annual, mid-term and long-term procurement programmes in the State Registry (it was not required under the Old Procurement Rules). It appears that this provision aims at providing more transparency with regard to procurement plans of subsoil users and conduct of procurement procedures by them. The Procurement Rules envisage that programmes may be amended, as necessary.

## 7. Methods of procurement

The methods of procurement are established by the Subsoil Law and include the following: (i) open

tender; (ii) from a single source; (iii) by request of price proposals; (iv) with use of electronic procurement system; (v) through commodity exchanges.
Similar to the previous versions, the Procurement Rules establish details for the procurement methods (i) – (iv) above. In regard to procurement through commodity exchanges, it is indicated that such must be conducted in accordance with the legislation on commodity exchanges.

## 8. Open tender

An open tender consists of eight steps: (i) the establishment of a tender commission by the Customer, (ii) the development and approval by the Customer of tender documentation; (iii) the publication of an advertisement on conducting an open tender in the State Registry[10] and in periodicals; (iv) submission of tender bids by the Potential Suppliers into the State Registry; (v) opening of tender bids in the State Registry and preparing the minutes on such opening by the Customer; (vi) considering tender bids by the Customer's tender commission and assessment of the bids on compliance with the established qualification requirements (relevant minutes are prepared as a result of this stage); (vii) submitting price proposals by the Potential Suppliers, whose bids comply with the established qualification requirements, opening of such price proposals in the State Registry and selection of a winner based on certain defined criteria (relevant minutes are prepared as a result of this stage); and (viii) execution of an agreement with a winner.
The current Procurement Rules introduce various new requirements with respect to the open tender process.

The following new provisions are important to note:

- A number of new requirements about advertising of a proposed tender have been introduced. There are different terms for publishing advertisements depending on whether tender is organized by a mining company or by an oil and gas company, whether it is an initial tender or a repeated tender, whether the amount of procured GWS is below or above certain thresholds.
- Technical specifications of the procured GWS must be specified for each lot (instalment) in case there are several lots (instalments) of procured GWS.[11]
- In case a Customer needs to procure identical GWS for the performance of work under different contracts on subsoil use, such GWS can be procured as one lot (instalment), provided that the Customer specifies the cost of GWS procured under each contract.
- The annual cost of work or services for which a Customer may require the Potential Suppliers to have relevant experience is decreased from 50,000 monthly calculation indices ("MCIs")[12] to 14,000 MCIs (i.e. from about US$508,000 to about US$143,000).

The requirement on presence of relevant experience can also be established for procurement of hazardous work and services which require a licence. [13]

- The Procurement Rules do not allow requesting from the Potential Suppliers originals of any documents apart from the originals of the documents confirming provision of security for tender bids (if tender documentation requires security). [14]
- The Potential Suppliers of both oil and gas companies and mining companies must submit their tender bids electronically, into the State Registry. Under the Old Procurement Rules, there was a separate procedure for procurement by mining companies, which permitted the Potential Suppliers of mining companies to submit their bids in hard copies.
- All documents must be submitted as colour copies scanned from originals. Exemptions are provided for a limited number of documents which are obtained from the governmental databases as 'black and white' documents. All documents submitted in violation of this rule should be counted as not submitted.
- The list of the grounds for dismissal of tender bids has been amended. The majority of amendments are of editorial nature. However, the current Rules added a new ground for rejection of bids of the Potential Suppliers. In particular, a bid may be rejected where there is information that a Potential Supplier which submitted the bid, or its participants (shareholders) or its indirect owners have been involved in illegal activities or corruption. The Rules stipulate that data about illegal or corrupt activities of the Potential Supplier or its direct / indirect owners should be obtained from owners of the informational databases. It is not clear, however, which databases are referenced. While it is logical to assume that the databases of law enforcement agencies are meant to be such source of information, there is no clarity.
- A tender cannot be recognised as invalid based on the ground that only one participant submitted a bid compliant with the requirements (as it was possible under the Old Procurement Rules). In such case, the Potential Supplier which submitted such compliant bid must be recognized the winner.

The current Rules have not changed provisions establishing criteria for selection of a winner. The bid with the lowest price is selected by the State Registry automatically. The lowest price is chosen subject to application of conditional reduction of prices proposed by Kazakhstan producers of GWS.[15] When there are two or more bids with the lowest price, priority is given to the Kazakhstan producer of GWS. When there are two or more bids with the lowest price submitted by Kazakhstan producers of GWS, priority is given to the supplier with the higher obligation on local content. The same rule applies when there are two or more bids with the lowest price submitted by non-Kazakhstan producers of GWS. Finally, in case of equality of all other terms, the price proposal which was submitted to the State Registry earlier is recognized as the winner.

## 9. Procurement from a single source

The Procurement Rules slightly amended the list of the cases when GWS can be procured from a single source. The list of such cases was supplemented, inter alia, by the following:

- Procurement of services on designer's control from the companies which developed design documentation. [16]
- Procurement of GWS which annual cost does not exceed 100 MCIs (about US$1,000).
- Procurement of GWS from the Kazakhstan suppliers of GWS, which are registered in a 'one-company town' ('monogorod'), provided that the Customer of GWS is the main company forming budget of such town ('gradoobrazuusheye predpriyatiye'). While this provision may be attractive for those Potential Suppliers which wish to work for specific Customers, it is not clear how this provision will work in practice. There is a Governmental Resolution which provides for the list of 'one company towns' ("Resolution 683").[17] There is also an Order of the Minister of Economy and Budget Planning, which approves the list of legal entities which constitute 'budget forming enterprises' and indicates towns for which these companies act as 'budget forming' ("Order 37").[18] Order 37 was developed and approved in accordance with the Law on Bankruptcy (i.e. not for the purposes of procurement under the Subsoil Law) and it is questionable whether Order 37 should apply to the Procurement Rules. Even assuming that Order 37 applies, it does not indicate 'budget forming companies' for all 'one company towns' listed in Resolution 683.[19] Clarifications from the authorized state bodies may be required for applying this provision.

The Procurement Rules also stipulate that a Potential Supplier, which supplies GWS as a single source supplier, does not need to obtain an electronic signature and be registered in the State Registry. It appears that this approach was used in practice under the Old Procurement Rules. Thus, this provision of the Rules confirms the practical approach which was used by companies under the Old Procurement Rules.

## 10. Procurement by request of price proposals

There are no significant changes with regard to procurement by request of price proposals. Similar to the Old Procurement Rules, this method may be used to purchase GWS when two conditions are met: such GWS do not have considerable significance for a subsoil user (the price is the main condition for selection of a supplier) and the annual volume of the procured goods

[15] The Subsoil Law stipulates that prices proposed by Kazakhstan producers of GWS are subject to conditional reduction on 20 percent for the purpose of selection a winner.

[16] The RK legislation requires mandatory control by the design company over the process of a project implementation. This requirement applies to the design documentation on construction of facilities as well as the design documentation on development of deposits of mineral resources.

[17] Governmental Resolution# 683 dated 25 May 2012, as amended («Resolution 683»).

[18] Order of the RK Minister of Economy and Budget Planning No. 37 dated 26 February 2003 («Order 37»). Order 37 was developed an approved under the Law on Bankruptcy. I

[19] Resolution 863 lists 27 towns in 12 regions of Kazakhstan, including Kulsary in the Atyrau oblast, Aksai in the West-Kazakhstan Oblast, Ekibastuz in the Pavlodar oblast. Order 37, however, indicates 'budget forming companies' only for 17 towns listed in Resolution 863. For example, Order 37 does not indicate a 'budget forming company' for Aksai in the West-Kazakhstan Oblast, for Satpayev in the Karaganda oblast, for Zyryanovsk in the East-Kazakhstan oblast.

(or works or service) does not exceed 14,000 MCIs (about US$143,000).

### 11. Procurement with use of electronic procurement system

The current Procurement Rules have not significantly amended provisions related to this procurement method. As previously, the procedures of procurement with use of an electronic procurement system correspond to the procedures for an open tender except for the procedures for providing price proposals and defining a winner. This means that steps (i) to (vi) (see section 8 above) are the same as for procurement via an open tender and steps (vii) and (viii) will be different as described below.

Under this method, all Potential Suppliers whose bids meet the qualification requirements will provide price proposals with the right to reduce their bid (the price proposal will be submitted to the State Registry and signed by electronic signature). The participants will be able to see other price proposals and the number of other participants, however they will not be able to see the names thereof. Each participant may submit a reduced price proposal as many times as it wishes. The winner is defined by the State Registry based on the same criteria as in the open tender process.

The current Procurement Rules require that the Potential Suppliers, in order to participate in procurement though electronic system, must download Customer's tender documentation and technical specification for each lot (instalment). The State Registry will record that tender documentation and technical specification for each lot (instalment) is downloaded by a particular Potential Supplier. Those Potential Suppliers who do not download tender documentation and technical specification will not be permitted to participate in the procurement process. This requirement is new.

### 12. Obligation to terminate procurement at any stage

The Procurement Rules repeat the principles of procurement: transparency, bona fide competition and support of Kazakhstan producers of GWS, as established by the previous versions of procurement procedures. The Procurement Rules, in addition, oblige a Customer to terminate procurement procedure and initiate the procurement of GWS again, if any of the above principles is violated.

### 13. Conclusion

The biggest amendment introduced to the Procurement Rules through the approval of the new version of the Rules is unification of the procurement procedures for

mining companies and companies engaged in oil and gas operations.

As to the methods of procurement, most of the revisions were introduced with respect to an open tender. It appears that the majority of these amendments were introduced either in order to eliminate discrepancies between different provisions, or to ensure better transparency and competition of the procurement process. However, one cannot refrain from noting that the recent amendments aggravate the already existing problem - excessive regulation of the procurement process by the State.

Currently, the Government is considering a draft concept of the new Subsoil Use Code. Among others, the authors of the concept propose ceasing state regulation of subsoil users' procurement process altogether. If such proposal will in fact be enacted into the law, this would be a welcome change long awaited by many subsoil users.

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# Antimonopoly audits in Kazakhstan

## Audit types

The Law "On Competition" was adopted on 25 December 2008 (hereinafter the "Law") and came into effect on 1 January 2009.
Since that date, identification and proof of violations of the antimonopoly legislation can be made only within the scope of an antimonopoly investigation that may be carried out on the following bases:

- Materials received from State authorities, with reference to a violation of the antimonopoly legislation of the Republic of Kazakhstan
- An application filed by an individual or legal entity
- Signs of a violation of the antimonopoly legislation of the Republic of Kazakhstan revealed in the actions of a market entity by the antimonopoly authority in carrying out its activities
- Application by mass media to the antimonopoly authority
- Information contained in mass media.

The above list of the grounds for investigation is exhaustive.

If there is evidence pointing to the presence of signs of violations of the antimonopoly legislation of RK in the actions of a market entity, State authority or local executive body, the antimonopoly authority will issue an order on investigation.

## Powers of antimonopoly authorities

When conducting an investigation, the officials of the antimonopoly authority are entitled to:

- Unhindered access to the territory and premises of the object of the investigation
- Access to the computerized databases (Information Systems) of the object of the investigation in accordance with the subject of the investigation
- Enquire and receive from managers, officers and other employees of the object of investigation necessary information, documents or copies thereof, relating to the subject of the investigation, oral and written explanations on issues that arise in the course of the investigation
- Engage specialists from other state bodies of the Republic of Kazakhstan and other persons to act as experts in the course of the investigation.

According to the RK Law "On State Control and Supervision in the RK," the antimonopoly authority must issue an act on institution of investigation and register the same with the Department of the Committee for Legal Statistics and Special Records of the RK General Prosecutor's Office.
Officials of the antimonopoly body that carry out an investigation are prohibited making demands or requests not related to the subject matter of the investigation.

### How the information obtained in the course of an investigation is used

Any information about the object of the investigation obtained by the antimonopoly authority in the course of the investigation may not be disseminated, except in cases of transfer of such information to another state authority in accordance with the laws of the Republic of Kazakhstan.

### Rights of persons involved in the investigation

Persons participating in the investigation of violations of the antimonopoly legislation of Kazakhstan have the right to:

- Familiarize themselves with the materials of the case, take excerpts therefrom and copies thereof, except for materials containing confidential information and/or trade secrets of other market entities
- Present evidence and participate in its examination
- Put questions to other persons involved in the case
- File motions for calling experts
- Provide written or oral explanations, make their arguments on all issues arising in the course of the investigation
- Familiarize themselves with motions of other persons involved in the investigation, resist motions or arguments of other persons involved in the investigation.

### Recommendations (tips) for an investigation

Unfortunately, in practice, market entities do not exercise all of their statutory rights. For example, the law provides for the right not only to present evidence, but also to participate in the examination thereof. However, in practice, market entities only provide evidence at the request of the antimonopoly authority, but do not exercise their right to participate in the examination thereof. Furthermore, marker entities—as a rule—do not exercise their right to question other market entities whose actions are being investigated. Additionally, market entities usually take a passive stand and do not exercise their right to file motions. For this reason investigations are one-sided and are predetermined accusative.

In addition to the above we recommend:

- Filing motions for engaging experts. Such experts may be economists specializing in the field of statistics. It is most efficient to engage an expert at a pre-trial stage, because the courts rely upon the authoritative opinion of the antimonopoly authority and the existing judicial practice, and often refuse to uphold the motions filed. In other words, it is possible to engage an expert independently to perform an expert examination of essential issues already at the stage of the preparation of the materials for the court. It is necessary to formulate questions accurately with respect to which the market entity will be able to obtain the necessary opinion.
- If necessary, demand a market analysis (and if the antimonopoly authority refuses to do so, independently order such study and make enquiries to various government agencies: Statistics, Customs Committee, etc.).
- Using the services of qualified lawyers specializing in the antimonopoly legislation and use other professionals' knowledge of the object of the investigation (financiers, sales, etc.) who can help with specific questions and necessary data.
- Responding in a timely manner to enquiries of the antimonopoly authority and provide only the requested information/documents.

### Periods of investigation

Investigation of violations of the antimonopoly legislation of Kazakhstan is to be carried out within two months from the date of the issuance of an order on investigation of violations of the antimonopoly legislation of the RK. The period of investigation may be extended by the antimonopoly body, but it may not be extended for more than two months. An order on the extension must be issued, and a copy thereof must be delivered to the applicant and the object of the investigation within three days of its issuance.

### Decisions of the antimonopoly authority on the results of the investigation

An official of the antimonopoly authority will prepare an opinion on the results of the investigation of violations of the antimonopoly legislation of the RK, based on which the antimonopoly authority will take appropriate decision(s):

- To discontinue the investigation of the violation of the antimonopoly legislation of Kazakhstan on the grounds prescribed by the Law
- To initiate an administrative case
- To issue an order on elimination of the violations of the antimonopoly legislation of the Republic of Kazakhstan
- To transfer materials to the law-enforcement authorities for criminal prosecution.

The investigation will be deemed completed on the day of its signing by an official (officials) of the antimonopoly authority of the opinion on the results of the investigation of the violations of the RK antimonopoly legislation.
A copy of such opinion will be served on or sent by registered mail to the object of the investigation within three business days of its issuance.
An opinion on the results of the investigation of the violations of the antimonopoly legislation of Kazakhstan must be approved by an order of the antimonopoly authority within 30 calendar days from the date of the

completion of the investigation. A copy of the order on the approval of the opinion on the results of the investigation must be served on or sent by registered mail to the object of the investigation within three business days of its signing. The applicant will be informed of the decision within the same time period.
The date the order on approval of the opinion on the adoption of the decision was signed will be deemed to be the date of the discovery of the administrative offense.

### Challenging the results of audits

An order on approval of the opinion on the results of the investigation may be appealed by the object of investigation in the court in a manner prescribed by the civil procedural legislation of the Republic of Kazakhstan. However, the judicial practice is such that the above cases are not considered in civil proceedings, because the orders of the antimonopoly authority do not themselves contain demands that would infringe the rights and interests of legal entities. Such cases are considered in administrative proceedings together with the administrative protocol. Such judicial practice was developed in Kazakhstan in 2010 and is applied to date. In practice, there were instances when some companies tried to overcome this barrier and cancel an order of the antimonopoly authority in Astana SIEC (Special Interdistrict Economic Court) but failed to do so, and they had to bring the issue of legality of the antimonopoly investigation to the specialized administrative court. However, there is a way to appeal illegal actions of officials who have conducted an audit (auditors) and signed the opinion on the results of the investigation in district courts of civil jurisdiction. Thus, in order to refer to the courts of civil jurisdiction in such cases, all violations of the law by auditors should be recorded. Such violations may be unreasonable enquiries by the auditors or, conversely, inaction when the auditors failed to request information necessary for the analysis of the market.

### Consequences of obstruction to employees of the antimonopoly authorities in conducting an investigation

In accordance with the Code of Administrative Offences of the Republic of Kazakhstan, … preventing the antimonopoly authority officials of conducting the investigation from access to the premises and territory shall entail a fine in the amount from 50 to 2,000 MCI (approximately from US$506 to US$20,240).

Statistics and examples in practice:
According to the official data published on the website of the antimonopoly authority, in 2013 the antimonopoly authority completed 171 investigations of violations of the antimonopoly legislation based on the facts of violation of the antimonopoly legislation. In terms of the identified violations, the investigations are as follows:

- Anti-competitive concerted actions and agreements of market entities – 23
- Abuse of dominant position – 45
- Unfair competition – 51
- Anti-competitive actions of state bodies – 41

Akylbek Kussainov
Associate

Akylbek focuses on real estate and corporate/commercial law with a particular focus on competition issues. Akylbek's experience includes drafting due diligence reports and complex analysis of clients' operations from various perspectives in advance of M&A transactions, as well as counseling on anti-corruption issues.

# Kazakhstan introduces visa-free regime for citizens of 10 countries from July 15

Pursuant to Decree No. 639 of the Government of the Republic of Kazakhstan dated 11 June 2014[1], the Republic of Kazakhstan has unilaterally introduced a visa-free regime for the period from 15 July 2014 to 15 July 2015 for the citizens of 10 countries: USA, UK and Northern Ireland, Germany, the Republic of France, Italy, Malaysia, the Netherlands, the United Arab Emirates, Korea and Japan. The duration of stay of foreign citizens in the Republic of Kazakhstan under the visa-free regime should not exceed 15 calendar days from the time they cross the state border.

If it becomes necessary for a foreign national to stay in Kazakhstan for more than 15 calendar days, such foreign national will need to apply to the internal affairs authorities of the Republic of Kazakhstan and obtain a "business" category single-entry visa for a period of up to 30 calendar days.

The Ministry of Foreign Affairs of the Republic of Kazakhstan will also issue "investor" category single-entry visas for up to 90 calendar days and multiple-entry visas for up to 3 years upon an application to Kazakhstan's authorized investment body confirming the investor status of citizens of the abovementioned 10 states.
This decree entered into force from the date it was signed (i.e., from 11 June 2014) and is valid until 15 July 2015.

[1] Decree No. 639 of the Government of the Republic of Kazakhstan dated 11 June 2014 "On Amendments to Decree No.148 of the Government of the Republic of Kazakhstan dated 21 January 2012 "On Approval of the Rules for Entry and Stay of Immigrants in and Exit from the Republic of Kazakhstan and the Rules for Migration Control and Record of Foreign Persons and Stateless Persons Unlawfully Crossing the State Border of the Republic of Kazakhstan, Unlawfully Staying in the Republic of Kazakhstan and Persons Who are Prohibited from Entry into the Republic of Kazakhstan".

Saida Tlenchiyeva
Senior Associate

Saida has experience 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.

# The Government has approved the National Plan of distribution of greenhouse gas quotas for 2014-2015

Decree No.1536 of the Government of the Republic of Kazakhstan "On Approval of the National Plan of Distribution of Quotas for Greenhouse Gas Emissions for 2014-2015" came into effect on 1 January 2014.

The National Plan affects a total of 166 enterprises from three economy sectors, namely (1) energy, (2) coal, oil and gas production and (3) industry. It deals with those enterprises, which CO2 emissions in 2012 exceeded 20,000 tons ("Operators").

The National Plan establishes a reference line as the average of the aggregate carbon dioxide emissions for 2011-2012, allocates limits (quotas) on the amount of CO2 which may be emitted by each Operator, and identifies quotas which will be held in reserve for new facilities in priority economic sectors. It also takes into account the obligations of subsoil users to reduce their emissions of greenhouse gases. The Operators of the energy sector include Eurasian Energy Corporation JSC, Kazakhmys Energy LLP and others; the coal, oil and gas sector – Karachaganak Petroleum Operating B.V. CJSC, North Caspian Operating Company B.V. JSC (Kashagan deposit). Tengizchevroil LLP and others; and in the industrial sector: Transnational Company Kazchrome JSC, ArcelorMittal Temirtau JSC, Shymkentcement JSC and others.

Compared to 2013, the overall volume of quotas, will increase by 8.2 million units1 totaling 155,353,757 in 2014 and–by 5.8 million units totaling 152,023,450 in 2015.

Dina Berkaliyeva
Senior Associate

# Dentons Corporate Counsels' Club

## In 2014 Dentons Kazakhstan launched a Corporate Counsels' Club.

Within the framework of this initiative, we hold a regular series of roundtable discussions focusing on the key issues you face in your day-to-day operations.

### More than just a platform for discussion

Through participation in our roundtables, you have an opportunity not only to share issues of concern but also to identify ways of improving the business and legal environment and then channel them to the state executive bodies.

### Your suggestions are welcome

To provide you with maximum benefit from these sessions, we are always happy to hear from you on the issues that are of importance to you. Should you wish to raise a particular topic, please email it to us at almaty@dentons.com

### The issues we have raised at our roundtables in the first half of the year include:

## M&A transactions in Kazakhstan

**22 May 2014**

The session was aimed primarily at those involved in the planning, structuring and execution of M&A transactions. Legal and business professionals (private equity funds, corporate institutions, lawyers) attended the event and actively participated in the discussion.

The agenda addressed the issues of concern and elements of best practice. The meeting began with an overview of Dentons' M&A specialists' experience in completed transactions. Attendees also had an opportunity to listen to short presentations from our team about the legal aspects of M&A transactions and developing practice.

## Company intellectual property: how not to end up with nothing?

**13 June 2014**

The roundtable was aimed at enabling companies to avoid "losing" intellectual property which they have invested in creating and avoid disputes over intellectual property rights and claims concerning violation of third party rights.

**Dentons' IP lawyers addressed a number of topics:**

- Intellectual property of a company: sitting on gold.
- Unscrambling the legal rules.
- Intellectual property created by employees: what you need to know so as not to end up with nothing.
- Agreements in regard to intellectual property: proper drafting.

The session attracted corporate lawyers from a wide range of companies, including EBRD, Al Hilal Islamic Bank, Danone, Efes, JTI, Sanofi-Aventis, BankPozitiv, Rahat, FoodMaster and others.

In addition to the presentations, the event offered participants a platform to discuss various issues of concern and an opportunity to share best practice experience.

## New Civil Procedure Code: What to expect?

**1 July 2014**

In light of the new Civil Procedure Code, Dentons addressed the issues of concern and importance to companies from various industries.

**The topics under discussion included:**

- Representation in court: authority, prohibitions and monopoly of [advocates?].
- Evidence and substantiation; restrictions on the provision of evidence.
- Return of the complaint and contentious procedure and its specifics.
- Specifics of adjudication of disputes challenging decisions and actions/omissions of state authorities.
- Novelties in consideration of cases in first instance courts, in the courts of appeal, cassation and supervision.
- Prohibitions on appealing/protesting court rulings.

The event was very well attended and received positive feedback from the attendees including Kazakhstan Kagazy Group, Efes Kazakhstan, Vernyi Capital, Baker Hughes, BG, RBS, MITSUI & CO., LTD, PetroKazakhstan Overseas Services Inc, KazAtomProm and others.

**Dentons Corporate Counsels' Club is resuming its schedule of roundtable discussions in November.**

We look forward to seeing you and your colleagues at our next roundtables, and we hope that the Dentons Corporate Counsels' Club will serve as a valuable instrument in building a better working environment.

# The list of jurisdictions with preferential taxation

approved by the Resolution of the Government of the Republic of Kazakhstan No.1318 of 31 December 2008 (with changes as of 23 July 2012)

**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.S. 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 law firm driven to provide clients a competitive edge in an increasingly complex and interconnected world. A top 20 firm on the Acritas 2014 Global Elite Brand Index, Dentons is committed to challenging the status quo in delivering consistent and uncompromising quality in new and inventive ways. Dentons was formed by the combination of international law firm Salans LLP, Canadian law firm Fraser Milner Casgrain LLP (FMC) and international law firm SNR Denton. Dentons' clients now benefit from approximately 2,600 lawyers and professionals in more than 75 locations spanning 50-plus countries across Africa, Asia Pacific, Canada, Central Asia, Europe, the Middle East, Russia, CIS and the Caucasus, the UK and the US. The firm serves the local, regional and global needs of a broad spectrum of clients, including private and public corporations; governments and government agencies; small businesses and start-ups; entrepreneurs; and individuals.

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## Dentons in Kazakhstan

In Kazakhstan, Dentons has been active through its predecessor firms for more than 20 years. With offices in Almaty and Astana, Dentons is the largest, and the leading, international legal practice in the country. With offices in Almaty and Astana totalling 6 partners and 32 lawyers we can offer you greater depth of knowledge. You can now 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.

# Key practice areas

## Corporate/M&A

- Acquisitions and Disposals
- Cross Border Investments
- Joint Ventures
- Corporate Governance
- Company Formation
- Private Equity Investments
- Anti-monopoly Clearances
- Company Law
- Shareholders' Agreements
- Securities Law
- Capital Markets
- Due Diligence
- Reorganization and Restructuring
- Competition Law

## Banking and Finance

- Acquisition Finance
- Asset-based Lending
- Asset Finance
- Consumer Finance
- Bilateral and Syndicated Lending
- Financial Institutions Regulation
- Debt Capital Markets
- Project Finance
- Real Estate Finance
- Trade Finance

## Energy and Natural Resources

- Subsoil Use Contracts
- Regulatory and Compliance
- Farm-out and Joint Operating Agreements
- Renewable Energy Projects
- Consortium Agreements
- Well Services and Drilling Contracts
- Oil Sales, Marketing and Transportation Agreements
- Environmental Law
- Licensing and Permitting of Operations
- Negotiations with State Investors
- Joint Ventures
- Local Content and Procurement Issues

## Litigation, Arbitration and Dispute Resolution

- Pre-action Case Assessment
- Tax & Customs Disputes
- Commercial Disputes
- Domestic and International Arbitration
- Mediation
- Construction Disputes
- Representation in Economic and Administrative Courts

## Tax and Customs

- Tax Structuring
- Tax Compliance
- Tax Disputes and Investigations
- Free Trade Zones
- Tax Due Diligence
- Corporate Tax Planning
- Preparation for Tax Inspections
- Customs Advice
- International Tax
- Personal Tax Advice

## Intellectual Property and Technology

- Trademarks and Industrial Property Items Prosecution
- Assignment and Licensing
- E-commerce
- IP and IT Consultancy Services
- IP Litigation
- Anti-counterfeiting Programs
- Advertising

## Real Estate and Construction

- Development Projects
- Landlord and Tenant
- Management Agreements
- Leasing
- Regulatory and Permitting Advice
- Real Estate Due Diligence
- Acquisitions and Disposals
- Construction Contracts
- Joint Ventures

## Employment and Labor

- Executive Employment Contracts
- Employment Law Compliance
- Collective Agreements
- Corporate Employment Audits
- Expatriate Immigration and Visa Issues
- Staff reductions, Layoffs, and Transfers
- Health and Safety Issues
- Employment Litigation

## Competition

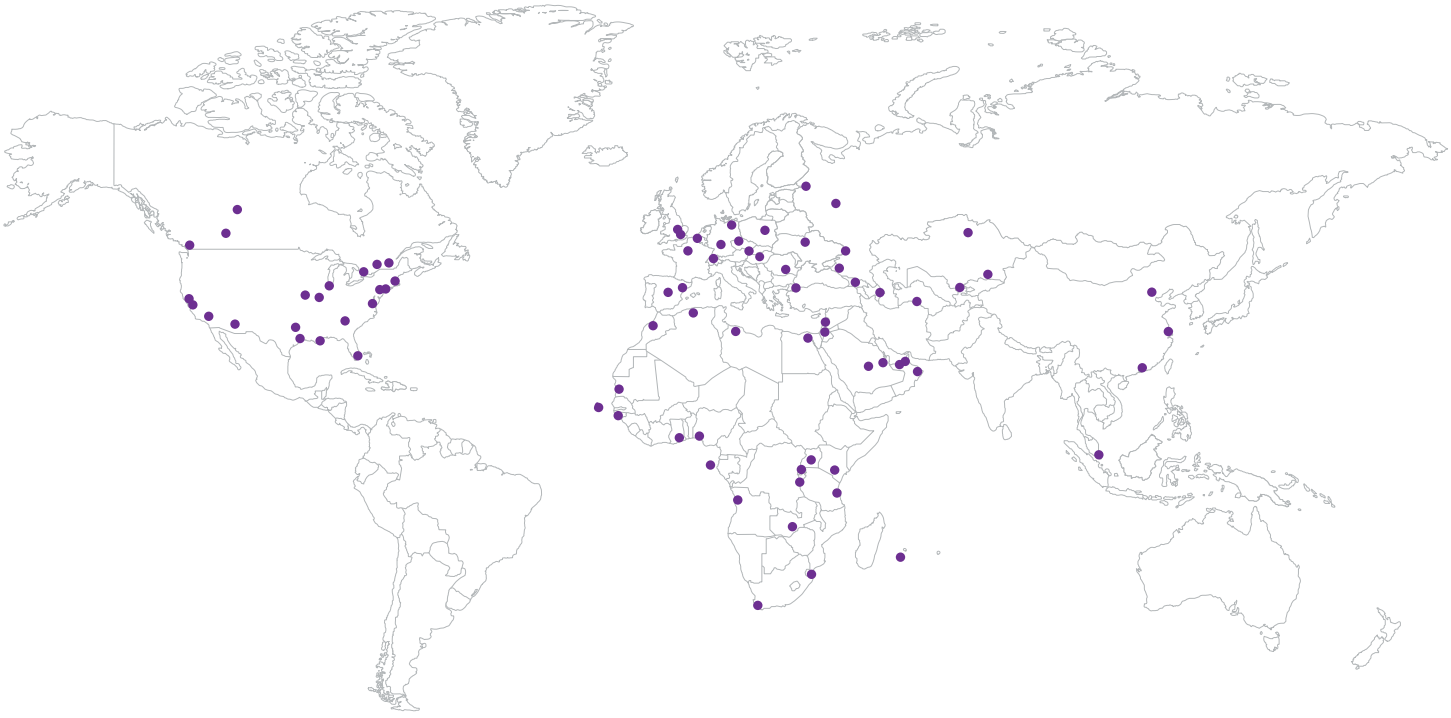
- Competition and Antitrust Litigation
- Competition and Antitrust Counseling and Compliance
- Merger Control and Review

Complimenting our strength in Kazakhstan's market, we have recognized areas of sector experience 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
- Energy and Natural Resources
- Information Technology
- Leisure and Hospitality
- Life Sciences
- Real Estate
- Shipping and International Trade
- Telecommunications

# Our global reach

## International standards and local knowledge



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