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November 2015

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Preface

Welcome to the 2015 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. New trends and developments are explained concisely for quick reference and ease of understanding.

The purpose of this publication is to present a summary of new legislation that we feel may be of interest to you. It is beyond the scope of such a summary to review all new legislation in depth, or to provide particulars of the legal and other considerations which should be reviewed when dealing with a particular industry.

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 to ensure that their endeavors are structured in compliance with local laws and to ensure maximum benefit.

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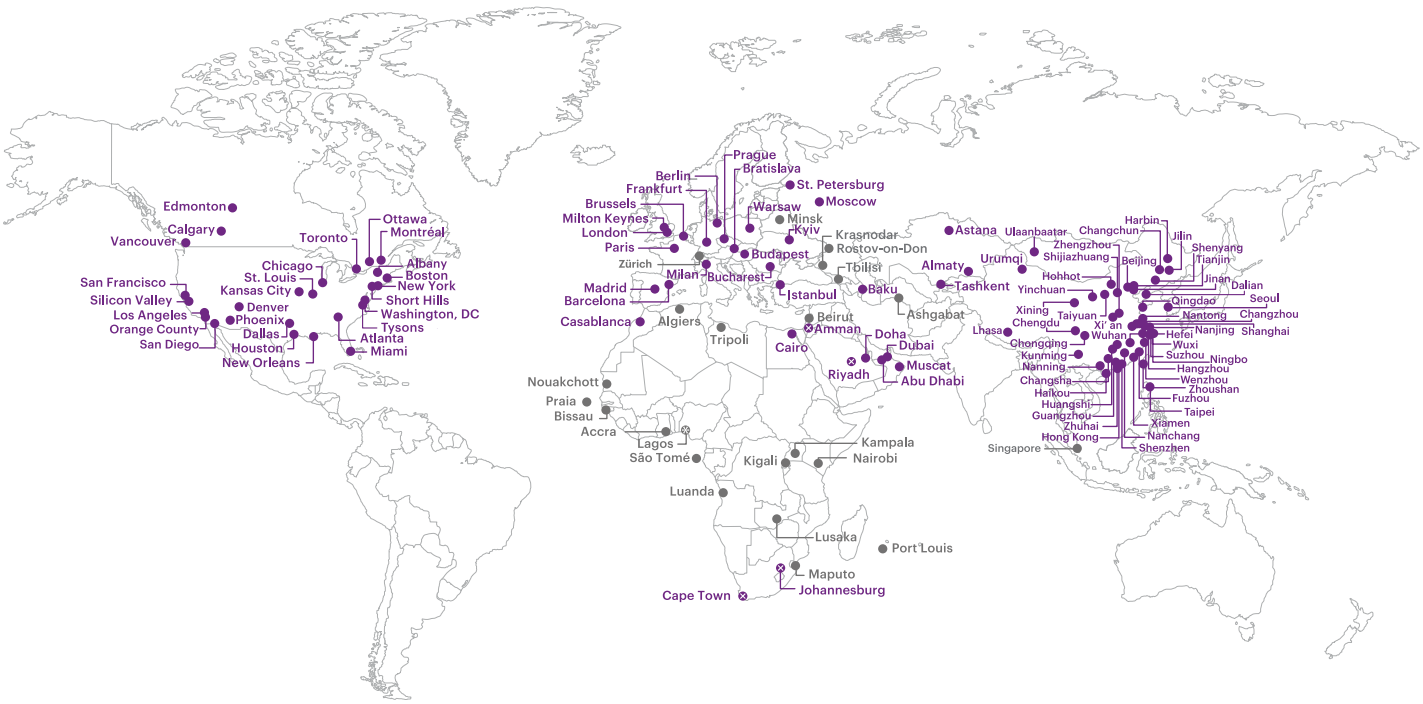

Legend
Offices and associate offices*
Associate firms and special alliances*

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Expected amendments to the legislation on personal data: requirement for "localization of personal data" in Kazakhstan

Aliya Seitova

Active use of the Internet—in particular social networks—by users in Kazakhstan, where the information contains personal data (i.e. name, date of birth, residential address, place of work/study, personal photos, etc.); the growing number of cases of leaked personal data; concerns regarding "Internet surveillance" on the part of some states about nationals of other states – all these elements have set the scene for the initiation of a legislative requirement for "localization of personal data" in Kazakhstan.

Such measures have proved controversial when introduced in other countries. Although proponents of these rules say that they are necessary to protect against foreign threats to information security, critics describe them as leading to potential restrictions on freedom of information, loss of privacy and the facilitation of State surveillance and censorship.

It is planned to add to the RK Law dated 21 May 2013 No. 94-V "On Personal Data and Protection Thereof" (hereinafter referred to as "**the Law**") a rule obliging owners and/or operators to keep personal databases in the territory of Kazakhstan (proposed changes are underlined):

"Article 12 of the Law: Accumulation and Storage of Personal Data

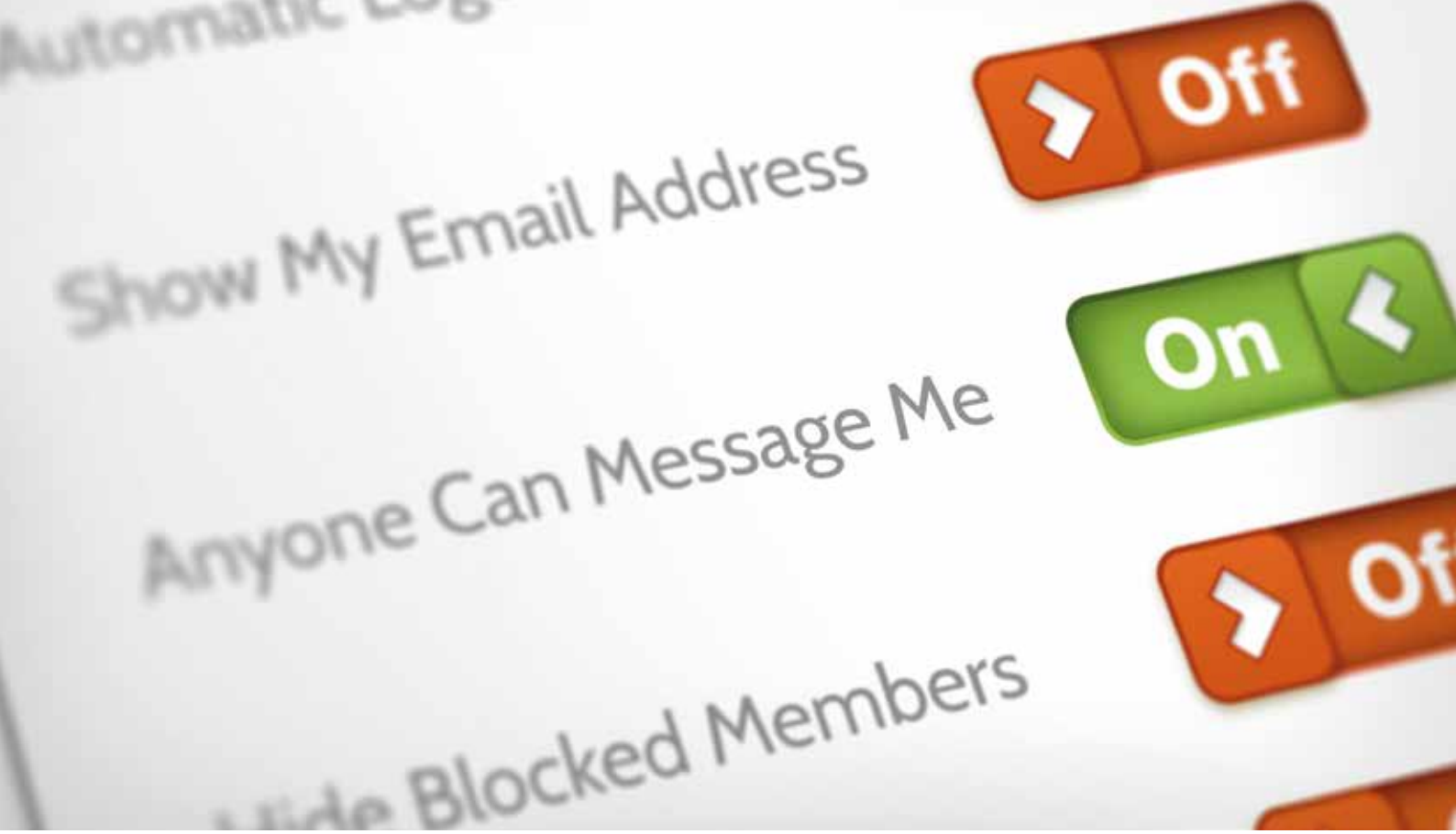
1. *Accumulation of personal data shall be carried out by collecting personal data, necessary and sufficient to accomplish the tasks carried out by the owner and/ or operator, as well as by a third party.*

2. *Storage of personal data shall be carried out by the owner and/ or operator, as well as by a third party in the database, **which is kept in the territory of the Republic of Kazakhstan.***

The period of storage of personal data shall be determined by the date of the achieving the objectives of the data collection and processing, unless otherwise provided by the legislation of the Republic of Kazakhstan".

To date, Kazakhstan operators and/or owners of the databases that contain personal data are typically registered abroad and, as a consequence, they maintain the databases outside the jurisdiction of the Republic of Kazakhstan (such operators and owners, for example, are Google, Microsoft, Facebook, Apple, VKontakte, etc.). In such cases, law enforcement agencies are deprived of direct access to the personal data of RK citizens. It is argued that this creates a threat to the informational security of the country. The aim of the planned changes is to prevent the moving and storage of personal data outside of the Republic of Kazakhstan.

The requirement for "localization of personal data" exists in China and India, where the storage of sensitive



data (medical data of citizens; information about political, religious and sexual preferences of citizens) outside the country is prohibited. In 2014 in Russia, amendments to the Federal Law on Personal Data dated 27 July 2006 No. 152-FZ were adopted. Thus, starting from 1 September 2015, personal data of Russian citizens may only be stored on servers located on the territory of the Russian Federation.

In Kazakhstan, it is expected that the requirement for localization of personal data will apply to all companies (including subsidiaries), as well as to branches and representative offices of foreign companies. The amendments will materially affect transnational companies working with large amounts of personal data. Such companies include banks; travel agencies; companies engaged in international passenger transportation; companies which use IT-infrastructure-based services outside of Kazakhstan, for example, web hosting, software, which is available online via the Internet; pharmaceutical companies that collect information about medical workers and patients, etc. The amendments would likely create business opportunities of local IT companies, as data storage and encryption services should be in demand.

In Kazakhstan, it is expected that the requirement for localization of personal data will apply to all companies (including subsidiaries), as well as to branches and representative offices of foreign companies.

As can be seen, the current proposed amendment to the Law is very simple, and many questions remain regarding the implementation of the requirement for personal data localization and possible implications for business in the country. Neither is it clear what the penalties for non-compliance will be. It is only known that the Majilis of the RK Parliament approved in the first reading on 22 April 2015, the draft RK Law on Amendments to Some Legislative Acts of the Republic of Kazakhstan on the Issues of Informatization, ,which contains the proposed amendment concerning localization of personal data.

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[1]Information on the passage of draft laws in the Majilis of the RK Parliament as of 15 July 2015.

Nuances pertaining to the regulatory consent for M&A transactions in the field of subsoil use

Nurzhan Albanov

In Kazakhstan the transfer of subsoil use rights and/or objects connected therewith is subject to a prior consent of the competent body. The RK Ministry of Energy serves as the competent body in the field of exploration and production of oil and gas, coal and uranium, while the RK Ministry of Investments and Development serves as the competent body in the field of exploration and production of other solid minerals. As the competent body's consent often becomes one of the key issues when conducting M&A transactions in the fields of oil and gas and mining, we would like to point out several issues related to this consent in the present note. These little nuances can become bigger issues if you ignore them.

1. The scope of objects, transfer of which requires the competent body's consent

The definition of objects connected with subsoil use rights (**Objects**) is broad and includes:

- Participatory interests and shares in a legal entity holding a subsoil use right, as well as in a legal entity which may directly and/or indirectly determine, and/or influence, decisions adopted by a subsoil user *if the principal activity of such legal entity is connected with subsoil use in Kazakhstan*.
- Securities evidencing title to shares, or securities convertible into shares, of a legal entity holding a subsoil use right, as well as a legal entity which may directly and/or indirectly determine, and/or influence, the decisions adopted by a subsoil user *if the principal activity of such legal entity is connected with subsoil use in Kazakhstan*.

As seen from the above definition, participatory interests and shares in ultimate or intermediary holding companies (wherever incorporated) of a Kazakhstan subsoil user are also considered to be Objects, but only if the principal activity of such a holding company is connected with subsoil use in Kazakhstan. *From Kazakhstan law perspective, transfer of such participatory interests and shares would require the competent body's consent only if they constitute Objects.*

It is generally accepted that the activities of a holding company include those of its subsidiaries.

Unfortunately, Kazakhstan law does not contain any rules or tests for determining whether the "principal

activity" of a given company is connected with subsoil use in Kazakhstan. Criteria for determining the level of activity in Kazakhstan is not clear: should it be such criteria as value of assets, level of profits, amount of reserves, number of employees, etc. This legal gap creates a lot of confusion in practice. In the absence of clear guidance, it is often difficult to reach a definitive conclusion on whether the principal activity of a foreign company is associated with subsoil use in Kazakhstan or not.

For the purposes of getting guidance on this issue, we applied for clarification to the RK Ministry of Investments and Development and the RK Ministry of Energy.

Pursuant to the clarifications provided by the RK Ministry of Investments and Development[2], the first criterion to determine whether the entity's main activity is connected with subsoil use in Kazakhstan, is to analyze the wording of the foundation documents of the respective entity. If these documents mention that the purpose of the entity or its principal activity is to be engaged in subsoil use or associated operations in Kazakhstan, then such entity's principal activity should be considered connected with subsoil use in Kazakhstan. The Ministry further notes that if the entity's foundation documents do not allow to determine its principal activity, analogy with Article 192.1 of Kazakhstan's Tax Code should be made. It could be concluded based on this analogy that the entity's principal activity should be treated as connected with subsoil use in Kazakhstan if the assets of a Kazakhstan subsoil user constitute 50 percent or more of the value of such a foreign entity's assets or shares. We note that this is an unofficial interpretation of Kazakhstan law by the Ministry and does not have obligatory force for the State authorities.

The response provided by the RK Ministry of Energy[3] is not clear at all and only contains a general reference to the fact that an entity's foundation documents shall reflect the description of its principal activity.

Therefore, as a practical matter, if it could be demonstrated that by each of the possible criteria all activities of a relevant entity worldwide on a country-by-country basis, as well as on an overall basis, are less than 50 percent, then it could be possible to invoke the exemption. However, even in such case there would be a risk of the competent body taking a different view. Therefore, if the parties would like to use this exemption, and there is any doubt, the risk could be avoided by receiving a prior view from the competent body in this respect.

The Subsoil Law also exempts certain types of transactions from the consent requirement. For example, transfer of a subsoil use right or Object between legal entities, in each of which not

less than 99 percent interest (shares) are owned, directly or indirectly, by the same entity or person, does not require the competent body's consent, provided that an acquirer is not registered in a country with preferential tax treatment.

2. Notification requirement

Article 37.11 of the Subsoil Law requires a purchaser of a subsoil use right or Object to notify the competent body about a relevant transaction within five business days of the completion date. According to Article 36.14 of the Subsoil Law, failure to do so shall be reason to invalidate of the transaction. The law does not provide any exemptions from this rule and does not establish any inter-dependence between the notification requirement and the consent requirement.

However, it happens sometimes in practice that acquirers decide not to submit a notification simply because their transaction is not subject to the consent requirement.

In our view, the notification requirement applies in all cases of transfer of a subsoil use right or Object regardless of whether such a transfer is exempt from the consent requirement or not. Such conclusion follows from literal interpretation of the law which does not link the notification requirement and the consent requirement. An analysis of the historical background of enactment of the notification requirement also bears out this interpretation.

The notification requirement was absent in the initial draft of the Subsoil Law and was introduced only during the subsequent discussions of the draft in the Kazakhstan Parliament. According to the parliamentarian Zhamalov,[4] this requirement was necessary for tax administration purposes and occasioned by Article 583.6 of the Kazakhstan Tax Code which requires the competent body in the field of subsoil use to provide the tax authorities with information on participants and parameters of a transaction that entails tax obligations in Kazakhstan within 10 business days of the completion date.

> In Kazakhstan the transfer of subsoil use rights and/or objects connected therewith is subject to a prior consent of the competent body.

Therefore, any transaction on transfer of a subsoil use right or Object is subject to the notification requirement. As failure to comply with this requirement could invalidate the transfer, it is recommended that acquirers always notify the competent body about their transactions.

An additional notification requirement is envisaged by Article 76.1.30 of the Subsoil Law. This time this requirement applies to subsoil users and not to the parties of the transaction. A subsoil user has an obligation to, inter alia, notify the competent body within 5 days of the completion date about transactions on disposal of subsoil use rights by affiliated or other persons, as well as of participatory interests or shares in its charter capital.

3. Groundwater: a minor issue that can become a significant problem

When selling or buying Objects (for example, shares in an oil producing company or in its parent company), the parties must identify carefully all subsoil use rights pertaining to a Kazakhstan operating company. It happens sometimes in practice that oil exploration and production companies have, in addition to their main subsoil use rights, certain rights with respect to groundwater. In these cases, a separate consent would be required from the RK Ministry of Investments and Development for completion of a transaction. This consent would be in addition to the consent of the RK Ministry of Energy. Failure to obtain it would entail a risk of invalidating the entire transaction, although the value of an oil exploration or production company's rights to groundwater could be insignificant if compared with its oil exploration or production rights.

In Kazakhstan the subsoil use rights to groundwater are granted in different forms: (i) a subsoil use contract for exploration or production of groundwater; (ii) a permit for production of groundwater of drinking and industrial purpose with production limits from 50 to 2,000 cubic meters per day; and (iii) a permit for exploration or production of technical groundwater in volumes more than 2,000 cubic meters per day for their injection into the stratum in

connection with extraction of minerals or for production of groundwater for the purpose of dewatering during the mining operations.

Under the Subsoil Law, all these rights to groundwater are considered to be subsoil use rights and, consequently, the consent of the RK Ministry of Investments and Development should generally be necessary for their transfer or transfer of Objects connected therewith. However, the problem is that in practice the Ministry provides consents only with respect to those subsoil use rights that are granted through execution of subsoil use contracts. This is because a contract for exploration or production of groundwater is concluded between the Ministry and a subsoil user, while the Ministry itself is not directly engaged in the process of granting the above mentioned permits (ii) and (iii). These issues require careful analysis on a case-by-case basis.

Similarly, if a Kazakhstan subsoil user also has the rights for exploration or production of wide-spread minerals, then the additional consent of local bodies would be necessary for transfer of participatory interests or shares in such a subsoil user or its direct or indirect holding companies. According to the Subsoil Law, wide-spread minerals include sand, clay, gravel and other minerals used in their natural state or with little processing and cleaning mainly for the satisfaction of local economic needs. The mentioned consent is not required if a subsoil use right is for production of wide-spread minerals for the satisfaction of the user's own economic needs.

4. Fields of strategic importance

Under the Subsoil Law, the Republic of Kazakhstan has a priority right to purchase subsoil use rights and Objects related to fields of strategic importance. In this case, a relevant transaction would also be subject to the waiver by the Republic of Kazakhstan of its priority right.

It is within the RK Government's competence to approve the list of fields having strategic importance. Therefore, when conducting M&A transactions in the field of subsoil use, it is always recommended to verify whether a relevant field falls within this list.

The waiver and consent are normally expressed in one letter issued by the competent body. However, the need to obtain this waiver complicates the overall process of obtaining the consent.

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[3]Available at http://blogs.e.gov.kz/ru/blogs/isekeshev_a/questions/296283
[4]Available at http://blogs.e.gov.kz/ru/blogs/shkolnik_v/questions/296280

Common pharmaceutical market of the Eurasian Economic Union: rules of access and competition

Akylbek Kussainov, Ilmira Yuldasheva

Since the breakup of the Soviet Union, the former Soviet republics have been on a quest for independent development. At the same time, modern trends in international relations and inter-dependence of the post-Soviet economies, once part of a common and centralized economic complex, have prompted these nations to find ways to work together and integrate in order to expand economic cooperation.

Serious integration processes in terms of expanding economic cooperation began in 2009, when an agreement was signed to create a common customs space in the territory of Belarus, Kazakhstan and Russia. The agreements to establish a Customs Union became effective in July 2010, and in December of that year—at a summit of the Eurasian Economic Union—an agreement was reached to establish the Eurasian Economic Union (the EEU or Union) on the basis of the Common Economic space of Belarus, Kazakhstan and Russia. A couple of years later, the aforementioned agreement was implemented, and a tri-party treaty on the Eurasian Economic Union was signed on 29 May 2014 at a summit in Astana (the Treaty.) The Treaty came into force on 1 January 2015.

One of the first common markets within the Union will be a common market of pharmaceuticals which should begin functioning as early as 1 January 2016. Article 30 of the Treaty states that the member-states shall create, within the framework of the Union, a common market of pharmaceuticals which will comply with the standards of good pharmaceutical practices and be based on common principles. Taking into account that such a market should commence functioning in the near future, one of the first agreements signed within the Treaty's framework was, therefore, an Agreement on common principles and rules of turnover of pharmaceuticals within the Eurasian Economic Union, dated 23 December 2014 (the Agreement.) The Agreement was ratified in accordance with the law of the Republic of Kazakhstan dated 12 October 2015.

The Agreement sets common principles and rules for the turnover of pharmaceuticals within the common market. However, there remain a great number of questions about how this will be implemented in practice. Moreover, considering that many pharmaceutical companies are working in the territory of the member states through their distributors, there will be questions in this regard as well, in particular with respect to how the economic activity of the market participants will be coordinated.

It should be noted that in view of Kazakhstan's recent acceptance to the WTO,[5] Kazakhstan has assumed obligations whereby the import of certain goods (approximately one-third of the commodity items, including pharmaceuticals) into the territory of Kazakhstan for sale in the domestic market would be subject to lower customs tariffs as compared to the tariffs set for the EEU. It is anticipated that relevant administrative mechanisms will be introduced in order to regulate these matters which will allow applying the EEU customs tariffs when moving such goods across the border to the other EEU member states (i.e. out of the territory of Kazakhstan.)

This article examines the matters of access and sale of pharmaceuticals within the common pharmaceutical market of the Union as well as general rules of competition which will need to be followed by the pharmaceutical market participants.

Access to the common market of pharmaceutical products within the Union

Regulation of the common market of pharmaceuticals

As stated above, since the beginning of 2016 the common market of pharmaceuticals within the Union will be regulated in accordance with the Treaty and the Agreement. For the purposes of implementing the Agreement, which lays out the

[5] As a reminder, the negotiations on Kazakhstan joining the WTO were finalized in mid-2015. In early October 2015, Senate of the Parliament of the Republic of Kazakhstan ratified the Protocol of Kazakhstan joining the Marrakesh agreement establishing the World Trade Organisation of 15 April 1994. After all necessary procedures have been completed, Kazakhstan will become the 162nd member state of the WTO.

[6] V. Boitsov, Drugs for the Union, http://www.rg.ru/2015/02/10/lekarstva1.html.

principal rules for the turnover of pharmaceuticals within the Union, it is also anticipated that a number of documents would be adopted by the Eurasian Economic Commission "which will result in a significant degree of harmonization of the systems of regulation of pharmaceuticals."[6] In particular, it is anticipated that common rules for registration and expertise of pharmaceuticals, common requirements for labeling and package leaflets, as well as other documents, would be adopted. Through the adoption of such documents, the plan is to ensure the consistency of mandatory requirements for safety and quality of pharmaceuticals across the territory of the Union.

In terms of the practical implementation of the Agreement, it should be noted that the Agreement provides for a transitional period until 31 December 2025[7] during which the pharmaceuticals which have been registered before 1 January 2016 within the territories of the Union member states should be brought into compliance with the Union's requirements and rules. In addition, the Agreement envisages that those pharmaceuticals that were authorized for sale in the territory of the member states will be allowed for sale in those states until the expiry of their registration certificate.[8] In this regard, it appears that once the common market of pharmaceuticals begins functioning within the Union, the national pharmaceutical markets in the member states will continue to operate throughout the transitional period.

Therefore, despite the practical difficulties of implementing the goals set by the Agreement, it is anticipated that starting from the beginning of 2016, pharmaceuticals will be sold in the Union member states in the following manner:

1) Sale of pharmaceutical products on the common market within the Union

Pharmaceuticals registered in accordance with the procedure established by the Eurasian Economic Commission (the EEC") and registered in the Unified Register of Pharmaceuticals (the Unified Register) may be sold freely in the territories of all the member states of the Union.[9]

2) Sale of pharmaceutical products in the national markets of the member states of the Union

The Agreement does not provide for an automatic inclusion into the Unified Register of those pharmaceuticals that were registered in the territory of the member states before 1 January 2016. Therefore, such products may be sold only on the relevant national markets up until the expiry of the transitional period.

At the same time, the question about those pharmaceuticals which were never registered on the territory of any of the member states before (i.e. before 1 January 2016) remains open. The Agreement does not explicitly provide that such pharmaceuticals must be registered under the common rules of the Union. Nevertheless, the Agreement envisages the transitional period as stated above during which the national pharmaceutical markets will continue to operate along with the common one. There is an opinion that starting from 1 January 2016 such "new pharmaceuticals" will have to be registered under the common rules. How this matter will be dealt with in practice, however, remains to be seen.

Certain matters such as, among others, licensing of the pharmaceutical market participants, advertising of pharmaceuticals and activity of pharmacies are left outside the scope of the common regulation. Those matters as well as other issues that are not covered in the Agreement will be regulated by national legislation in accordance with the laws of each particular member state.

Registration of pharmaceutical products under the common rules

The Agreement does not provide for the establishment of a supra-national body which would be responsible for the registration of pharmaceuticals intended for sale in the common market. It is anticipated that an applicant will have the ability to apply

[7]Clause 1 Article 20 of the Agreement.
[8]Clause 2 Article 8 of the Agreement
[9]Clause 1 of Article 8 of the Agreement.

for registration of pharmaceuticals in the territory of one of the member states (i.e. reference state).

Registration of pharmaceuticals will be carried out in accordance with the rules of registration and expertise of pharmaceuticals as approved by a resolution of the EEC.[10] As of today, a draft of the Rules of Registration and Expertise of Pharmaceuticals for Medical Use has been developed (the Draft Rules of Registration of Pharmaceuticals), and the discussion thereof concluded.

It follows from the Draft Rules of Registration of Pharmaceuticals (Section III) that pharmaceuticals will be registered according to a consecutive procedure (mutual recognition procedure) or a simultaneous procedure (decentralized registration procedure). Below is a brief summary of these procedures as provided in the Draft Rules of Registration of Pharmaceuticals available on the EEU's electronic law portal.[11]

Under the mutual recognition procedure it is anticipated that the registration of a pharmaceutical will be made in two stages:

1) National registration – the reference state carries out registration for the purposes of the pharmaceutical in question being sold in the market of such state
2) Mutual recognition – at an applicant's discretion, the pharmaceutical may be recognized in other member states (recognizing states).

During the first stage, the authorized body of the reference state will carry out expertise of the pharmaceutical and, if positive, will issue a registration certificate to the applicant and will make an entry on the pharmaceutical in the Unified Register.

During the second stage, after the pharmaceutical is registered in the reference state (i.e. when the registration in one of the Union member states is made) the applicant may apply to the authorized bodies or expert organizations of other member states and for registration of the pharmaceutical under the mutual recognition procedure. The expertise of pharmaceuticals in the recognizing states is carried out in the form of a review of the applicant's request and supporting documents as well as an expert evaluation report of the reference state. If the recognizing state approves the reference state's expert evaluation report and issues a positive decision on the registration of the pharmaceutical, then the recognizing state will issue a registration certificate to the applicant, on the basis of which such pharmaceutical will be granted permission to be sold in the territory of the recognizing state.

If, however, the referring state's expert evaluation report is not approved by the recognizing state, the documents will be handed over to the Expert Committee on Pharmaceuticals under the EEC Collegium for the settlement of any disagreement. Based on the results of the settlement procedure, the recognizing state's authorized body will make a decision as to whether the registration will be granted or denied.

Therefore, based on the results of the mutual recognition procedure, a pharmaceutical may be permitted for sale in the territory of the referring state and those recognizing states which have decided on the registration favorably (i.e. in the reference state and in one or more recognizing states).

Under the decentralized registration procedure it is anticipated that the registration of a pharmaceutical will be carried out by several member states. The applicant independently selects the reference state when lodging the registration request (i.e. in those cases where there is no registration in place in any one of the member states).

Registration of a pharmaceutical under the decentralized registration procedure is also carried out in two stages which occur simultaneously:

1) Registration in the reference state;
2) Approval of the expert evaluation report in the recognizing states.

[10]Clause 1 of Article 7 of the Agreement. In accordance with clause 7 of Article 7 of the Agreement, it is anticipated that when carrying out registration and expertise of pharmaceutical products, the member states of the EEU will be mutually recognizing the results of preclinical (non-clinical), clinical and other studies (tests) of pharmaceutical products, the results of inspections of production, preclinical (non-clinical), clinical studies (tests) of pharmaceutical products, and systems of pharmacological control, for their compliance with good pharmaceutical practices and requirements as established by the Eurasian Economic Commission.

[11]See: https://docs.eaeunion.org/ru-ru/Pages/DisplayRIA.aspx?s=e1f13d1d-5914-465c-835f-2aa3762eddda&w=9260b414-defe-45cc-88a3-eb5c73238076&l=d70984cf-725d-4790-9b12-19604c34148c&EntityID=587.

For the purpose of registration under this procedure, the authorized bodies of both the reference state and recognizing state work together to carry out expert examination of a pharmaceutical. If both states' authorised bodies make favorable decisions on the registration, the applicant is issued the relevant registration certificates.

If a decision is made to deny registration, the reference state's authorized body notifies the applicant accordingly.

Therefore, based on the Draft Rules of Registration of Pharmaceuticals as a result of the decentralized registration procedure, a pharmaceutical may be registered in the reference state and the relevant recognizing states. At the same time, it is not entirely clear what decision will be made in practice, if disagreement between the member states which have considered the application (for example, when two/three states give positive opinions, whereas one or two give negative opinions) remains.

In light of the foregoing, the manufacturers of pharmaceuticals will have the possibility to choose the reference state to lodge an application for registration and to select the procedure for registration of pharmaceuticals that are intended for sale in the common market of the Union. At the same time, despite the creation of the common market of pharmaceuticals, each member state will keep an individual approach to the registration of pharmaceuticals.

In addition, it is worth noting that the Agreement provides for those categories of pharmaceuticals which are not subject to registration within the Union.[12]

Rules of competition in the common pharmaceutical market

As noted above, from 2016 the manufacturers of pharmaceuticals will be able to complete registration under the common rules in one of the EEC member states and gain access to the common market without having to wait until their national registration certificates expire. Since that moment, the manufacturers will need to bear in mind that a cross border market may be triggered[13] in the event the pharmaceuticals are sold in the territory of two or more member states, and consequently the Union's common principles and rules of competition will need to be applied.

General rules of competition

According to the general rules of competition, as provided for in the Agreement:

1) Acts (omission to act) of a market participant holding the dominant position (i.e. not less than 35% of domination by an individual market participant, and not less than 50% or 70% of domination by several market participants)[14] which result or may result in the prevention, limitation, elimination of competition and (or) impairment of the interests of third parties, are prohibited;[15]

2) unfair competition is not allowed;[16]

3) 3) Agreements between competing business entities (market participants) of the member states carrying out their activity within the same market which result or may result in certain consequences,[17] are prohibited;

4) 4) "Vertical" agreements between business entities (market entities) are prohibited, except for "vertical" agreements which have been recognized as permissible in accordance with the criteria of permissibility;[18]

5) Other agreements between business entities (market participants) are prohibited, except for "vertical" agreements which have been recognized as permissible in accordance with the criteria of permissibility,[19] if it has been established that such agreements result or may result in limitation of competition; and

6) individuals, commercial and non-commercial entities are prohibited

[12]Clause 6 of Article 7 of the Agreement.

from coordinating economic activity of business entities (market participants) of the member states, if such coordination results or may result in any of the consequences specified in items "(3)" and "(4)" above which may not be recognized as permissible in accordance with the criteria of permissibility.

Entering into distributorship contracts in the new reality

Practice shows that today many pharmaceutical companies work through distributors and enter into individual distributorship contracts generally dividing the EEC market by the territories of member states. It may well be that the manufacturers have their own commercial reasons for that. However, from a legal point of view, this is also explained by the fact that up until the present there have been different requirements and rules for sales of pharmaceuticals as well as national rules of competition in each member state.

From 2016, pharmaceutical companies and distributors will also need to adhere to common rules of competition when selling pharmaceuticals admitted to the common market of the Union. If a pharmaceutical is included into the Unified Register and thus permitted for sale in the common market of the Union, entering into a distributorship contract confining the sales of such pharmaceutical (for instance, to the territory of only one certain member state) may conflict with the common rules of competition as set out in the Agreement. Such provisions of distributorship contracts may particularly be qualified as "coordination by business entities of economic activity of business entities (market participants) of the member states" or as other "vertical" relations which are not recognised as permissible in accordance with the criteria of permissibility, and which result or may result in limitation of competition."

Moreover, other coordination of economic activity of business entities (market participants) of the member states (including by means of distributorship contracts) is prohibited, if such coordination results or may result in any of the following consequences which may not be deemed permissible in accordance with the criteria of permissibility:

Agreements between business entities (market participants) of the member states, which are competing and which carry out their activity on one and same market, that result or may result in:

- Setting or maintaining of prices (tariffs), discounts, increases (surcharges), mark-ups;
- Increase, decrease or maintenance of prices at auctions;
- Division of the commodity market by territory, volume of sales or purchase of goods, assortment of goods on sale, or composition of sellers or buyers (customers);
- Reduction or termination of production of goods; or
- Refusal to deal with certain sellers or buyers (customers).[20]

"vertical" agreements between business entities (market entities), except for "vertical" agreement that are deemed permissible, if:

- Such agreements result or may result in fixation of resale price for the goods, except for cases when a seller sets the maximum resale price for a buyer;

[13]In accordance with Clause 2 of the Resolution of the Supreme Eurasian Economic Council No. 29 dated 19 December 2012: "...a market shall be deemed transboundary if geographic boundaries of the commodity market extend over the territory of two or more member states."
[14]See Resolution of the Supreme Eurasian Economic Council No. 29 of 19 December 2012.
[15] Clause 1 of Article 76 of the Treaty, further, explains which acts (omissions to act) specifically are prohibited.
[16] Clause 2 of Article 76 of the Treaty, further, lists the types of unfair competition.
[17]Clause 3 of Article 76 of the Treaty, further, disclosed the consequences such agreements result or may result in.
[18]Clause 4 of Article 76 of the Treaty, further, lists the types of vertical agreements.
[19]In accordance with Annex 19 to the Treaty, agreements may be deemed permissible if they do not impose on business entities (market entities) limitations which are not necessary for obtaining the purpose of such agreements, and do not create possibilities for eliminating competition in the relevant commodity market, and if the business entities (market entities) prove that such agreements result or may result in: 1) improvement of production (sale) of goods or stimulation of technological (economic) progress or increase of competitiveness of the goods manufactured by the member states on the global commodity markets; 2) receipt by the consumers of the commensurable share of benefits (profits) which the involved persons obtained as a result of such actions. Conversely, "vertical" agreements are permissible if: 1) such agreements are the contracts of commercial concession; 2) the share of each business (market) entity participating in such an agreement on the commodity market that is subject of such "vertical" agreement does not exceed 20 percent.

- Such agreements provide for a buyer's obligation not to sell the goods of the business entity (market participant) that is in competition to the seller. Such prohibition does not extend to agreements for the buyer's sale of goods under a trademark or other means of individualization of a seller or manufacturer.[21]

Pharmaceutical companies and/or their distributors may also violate other common rules of competition as listed above.

At the same time, if pharmaceutical companies wish to keep their national registration certificate, throughout the transitional period (i.e. up until the end of 2025) the pharmaceuticals may be sold freely in the territory of those states which issued the national registration. Under such an approach, during the transitional period the pharmaceutical companies will most likely be able to enter into distributorship contracts dividing the common EEU market (for example, by the territories of individual member states).

For the sake of fairness, it should be noted that the participants of the pharmaceutical market should in any case comply with the requirements of the national legislation in effect in the relevant member states. However, this article does not examine the requirements and specifics of national legislation.

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[20]Clause 3 of Article 76 of the Treaty.
[21]Clause 4 of Article 76 of the Treaty.

IP legislation has undergone changes

Aliya Seitova

Interested NGOs, representatives of foreign investors in Kazakhstan[22] and patent attorneys have campaigned for amendments to the IP legislative acts of the Republic of Kazakhstan in order to reduce the amount of time it takes to register a trademark; to simplify the procedure for registration of IP rights transfer agreements; and to make the regulation in general more "user-friendly" for titleholders. As a result, the Law on Amendments to Certain Legislative Acts of the Republic of Kazakhstan on the Issues of Legal Regulation in the Area of Intellectual Property was adopted with effect from 20 April 2015.

Exhaustion and parallel import

The Trademark Law now establishes a regional principle of 'exhaustion'. This change is related to the harmonization of the national legislation with the provisions of the Agreement on the Eurasian Economic Union (EAEU). A number of actions in respect of a product, which has been lawfully introduced into civil circulation in the EAEU by a trademark owner itself or upon its consent, does not constitute an infringement of the exclusive right to the trademark. Prior to the adoption of the amendments, the trademark law provided for a national principle of exhaustion, which was contrary to the obligations of the Republic of Kazakhstan under the EAEU Agreement.

The regional (as well as the national) principle of exhaustion implies that it is not possible to import, without the permission of the trademark owner (parallel import), a trademark product into the EAEU, but deprives the trademark owner of the right to subsequently control the circulation of the product in the Union's territory.

On 11 March 2015, it was proposed at the meeting of the working group of the Eurasian Economic Commission to develop exceptions from the regional principle of exhaustion of trademark rights for certain categories of goods in the territory of the EAEU. If these amendments are adopted, in exceptional cases the international principle of exhaustion of rights will be in effect and the parallel import of goods into the EAEU will be allowed. According to some media, parallel imports could be allowed in respect of pharmaceuticals, medical products and automotive parts.

[1] European Business Association of Kazakhstan (EUROBAK) and the American Chamber of Commerce in Kazakhstan (AmCham).

Simplified registration of assignment and licensing agreements

The Singapore Treaty on the Law of Trademarks 2006 came into force for the Republic of Kazakhstan on 5 September 2012. It allows for simplified procedures for amending trademark registrations, registering trademarks, licensing agreements and assignment agreements as well as for trademark renewal and some other procedures. In practice, however, there have been difficulties in the application of the treaty. The rules of the Singapore Treaty have not yet been fully implemented into the national legislation.

Currently, the trademark law provides that the expert examination and registration of agreements on the transfer of trademark rights (assignment and licensing agreements) is to be carried out in accordance with the provisions of the Singapore Treaty, if one of the parties to the agreement is an individual or a legal entity of a foreign member state of the Treaty. Where both parties to a trademark transfer agreement are Kazakhstan persons, the provisions of the Treaty do not apply.

The Singapore Treaty rules prohibit the expert organization from requesting submission of an assignment agreement or licensing agreement itself or a translation thereof or specification of the financial terms thereof. Therefore, the registration of license agreements must now be carried out on the basis of an application specifying the parties to the agreement, the scope of the transferred rights and other information. However, the expert organization may require submission of evidence in respect of any statement contained in the application for registration. Such documents may include:

- a certified (by a public notary or any other competent authority) extract from an assignment or licensing agreement identifying the parties and the scope of rights being assigned/licensed;
- an uncertified application for the registration of a license or assignment agreement, the content of which corresponds to the application form signed by both the owner and the assignee/licensee.

Neither the Law on amendments to certain RK legislative acts on IP legal regulation nor the trademark law provide for direct application of other provisions of the Singapore Treaty not dealing with the registration of assignment or licensing agreements.

The introduced amendments regarding the application of the Singapore Treaty are progressive as a whole and accommodate the interests of titleholders with respect to reducing and simplifying various registration procedures with the state authorities. However, it is too soon to assert that comfortable conditions have been created for business. The Treaty allows some freedom to patent agencies in determining a list of documents which may be enquired from titleholders during registration. Only the practice of the expert organization and the authorized body will show to what extent the interests of titleholders are respected.

Abolished certificates of trademark registration

After the entry of the Law into force, registration certificates will no longer be issued to trademark owners, and the exclusive right to a trademark will be certified by a registration entry in the State Register of Trademarks of the RK and confirmed by an extract from such Register.

Simplified procedure for the transfer of the right to obtain a trademark registration

From the date the Law enters into force, applicants will have the right to apply for the assignment of a trademark application without executing and registering an assignment agreement. Instead, they will be able just to file an application with the expert organization. Previously, in order to assign a trademark application, it was necessary to execute and register an assignment agreement.

Reduced timing of the trademarks registration

The Law establishes timeframes for all stages of the expert examination of an application for trademark registration and specifies in detail the timing of the approval of preliminary and final expert opinions by the Ministry of Justice, and the timing of the delivery of such opinions to the applicants. This amendment is significant and will contribute to a reduction in the time taken to register a trademark.

Change in the list of absolute grounds for refusal in trademark registration

The list has again been changed. Now, the registration is refused if

a trademark consists exclusively of designations which are non-distinctive or represent the international unpatentable names of pharmaceuticals (e.g., amoxicillin, ampicillin). The direct associative connection with goods or services for the designation of which trademarks are used has been excluded from the list of absolute grounds. Previously, the existence of such ground for refusal precluded the registration of almost all trademarks that could howsoever be associated with the applied goods and/or services.

Mandatory registration of a franchising agreement

The RK Civil Code sets the rule for the mandatory state registration of a franchising agreement. It specifically states that franchising agreements are subject to registration with respect of intellectual property items, the exclusive right to which arises from the moment of their registration (inventions, utility models, industrial designs, selection achievements, trademarks and integrated circuit topographies, if registered). Earlier, the Franchising Law established that such agreement had be executed in a simple written form. Now, the provisions on the registration of a licensing agreement will apply to the procedure for the registration of franchising agreements.

Aliya Seitova
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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

	Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961	June 30, 2012	Related rights objects, namely performances, phonograms and broadcasts
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 in 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

Exhaustion of trademark rights in the Eurasian Economic Union and distributor agreements

Saule Massalina

The exhaustion of trademark rights together with the related question of parallel import is now a hot topic within the Eurasian Economic Union (the EAEU). On 23 June 2014, the Eurasian Economic Commission (the executive body of the EAEU) created the Working Group to study the question of the exhaustion and parallel import. The Working Group is currently considering solutions to balance the interests of industry (i.e. IP rightholders) and consumers. On 21 August 2015, the Working Group was instructed to draft, by 31 December of this year, amendments allowing the parallel import for selected categories of goods. In this article, we first look at what the principle of exhaustion means, and then we discuss what implications the regional exhaustion rule could have for certain provisions of distributor agreements.[23] Finally, we consider certain competition issues of the distributor agreements in the EAEU context.

What Is Exhaustion?

The principle of 'exhaustion' of trademark rights provides that it is not an infringement of a trademark to use it on goods which have been put on the market within a particular territory by the trademark owner or with its consent.

The EAEU Agreement, which took force on 1 January 2015, sets forth the regional exhaustion of trademark rights as follows: "There shall be found no infringement of trademark rights in the use of the trademark with respect to goods which have been lawfully released into civil circulation on the territory of any of the Member States directly by the trademark rightholder or other persons upon its consent." In other words, once trademarked goods are lawfully released into free circulation in Kazakhstan by the rightholder or upon its consent, these goods may be further resold without the rightholder's consent in Kazakhstan, as well as in Russia, Belarus, Kyrgyz Republic and Armenia.

The principal of regional exhaustion is intended to struggle against parallel import, i.e. import of original trademarked goods from

[23]The same discussion may be applicable to dealer agreements.

outside the EAEU but without the rightholder's consent. The exhaustion principle is not completely new to Kazakhstan law. In 2010 (with the effect in Kazakhstan only in 2012), the principal of regional exhaustion was introduced within the framework of the Customs Union (i.e. between Kazakhstan, Russia and Belarus). This principal can be contrasted with that of 'international exhaustion', that is, once the rightholder sells its goods, they may be further sold and imported to any country in the world without restrictions. The recognition of 'international exhaustion' legalizes the parallel import of goods.

Within the EAEU authorities and national regulators of Kazakhstan, there are now two opposing views. Antimonopoly bodies insist that the regional exhaustion be substituted by the international exhaustion, which would keep prices for trademarked goods lower, thus would protect competition and consumers' interests. Trade and economy regulators, on the contrary, believe that the principal of regional exhaustion should be retained, as it facilitates the development of local industries. The pharmaceutical industry, for example, argues that moving to a principle of international exhaustion would cause the flow of low quality medicine into the country.

There has as yet been no solution adopted by the EAEU Working Group. On 21 August 2015 the Council of the Eurasian Economic Commission convened and decided that the Working Group has to draft, by 31 December of this year, amendments to the EAEU Agreement that would allow parallel import for selected categories of goods. Therefore, it is expected that the existing system of regional exhaustion will be replaced by a "hybrid" system of the regional exhaustion as the default rule with international exhaustion in defined exceptional cases.

Distributor agreements and the exhaustion principle

Distribution agreements often allocate a specific territory to the distributor, and require the distributor to obtain the prior consent of the supplier to supply goods outside of this territory (a **Territory Restriction**). Among other contractual restraints on the distributor, there may be a requirement for a rightholder's prior consent for the sale of goods to certain persons (e.g. governmental organizations), and a restriction on quantity of a product that may be sold per customer.

Rule of the "First Sale"

In view of the freedom on movement of goods in the EAEU and the exhaustion rule, the question arises whether the Territory Restriction which relates to a territory within the EAEU (e.g. Kazakhstan) is legitimate.

We believe that it is legitimate for the following reason.

In our view, the exhaustion rule requires that the "first sale" by the Distributor on the EAEU territory must be on the rightholder's consent, and further sales do not need consent. Since the market of the EAEU is common, regardless of whether the first sale is made domestically or to the territory of another EAEU Member State, the rightholder is allowed to consent to such sale. The Territory Restriction is a case when the first sale is to be made to the territory of another EAEU Member State. Therefore, the rightholder would be entitled to restrict this first sale by the Distributor to the territory of another Member State.

Form of the consent

The EAEU Agreement is silent on what qualifies as "consent." In our view, this question is left for national laws to decide. According to Kazakhstan law, the situation is not completely clear: whether a consent letter would suffice or a licensing agreement is required.

Rightholders certainly would be in a safer position if they conclude a licensing agreement. A distributor agreement with incorporated licensing provisions would have the same status as a licensing agreement. Without the licensing agreement in place, use of the trademark by the Distributor would not be considered as "use" in the sense of the Trademark Law of Kazakhstan. As a result, a trademark would be vulnerable to an application for cancellation on a non-use basis at the instigation of any interested party.

It should be noted that licensing agreements (thus also distributor agreements with incorporated licensing provisions) are subject to registration with the IP office in Kazakhstan and may be invalidated if not registered. If, however, the rightholder is from a country which is a signatory to the Singapore Treaty on the Law of Trademarks, instead of the licensing agreement, parties may simply file an application for registration.

Consent for Specific Goods

What is also very important in the exhaustion rule is that the rightholder's consent appears to be for specific goods imported and further sold by the Distributor. The consent is given for "goods which have been lawfully released into civil circulation on the territory of any of the Member States." It may be concluded that where goods have not yet been lawfully released into free circulation, the rightholder has not yet exercised its right to consent to the sale of such goods. Therefore, the rightholder's consent would not cover all goods of the same type and of the same trademark that could be brought to the country in the future. For each new import the rightholder's consent would be required.

Distributor agreements and competition rules

The Competition Law of Kazakhstan prohibits anti-competitive agreements between market entities that result or may result in the restriction of competition, including agreements that restrict access to the market.

According to the EAEU Agreement, similarly, vertical agreements that result or may result in the restriction of competition shall be prohibited. Restriction of competition may be seen, for example, in market entities' giving up from independent acts on a market, or in other circumstances that create a possibility for a market entity to influence the general conditions of circulation of goods unilaterally.

The question is whether the Territory Restriction might qualify as restricting access of the Distributor to the market and thus be unlawful.

Under the Competition Law of Kazakhstan, there are certain exceptions when an agreement is not considered as an anti-competitive agreement. One exception is related to agreements on the exercise of IP rights. Distributor agreements are a mixed kind of agreements: they contain provisions on organization of distributor's business and include conditions on exercise of IP rights. As mentioned, those conditions on IP rights in distributor agreements are licensing provisions. If those licensing provisions are drafted and formalized taking into account of mandatory requirements of Kazakhstan law, we believe that such a distributor agreement could be considered as an agreement on exercise of IP rights in the sense of the Competition Law. Hence, a Territory Restriction would not qualify as restricting access of the Distributor to the market and would be allowed.

By paying attention to the way in which territorial distribution and licensing arrangements are drafted, such agreements may fall within the exception granted for IP licensing arrangements, and on this basis may avoid a challenge to the validity of such agreements on competition grounds.

As a concluding note, the EAEU legislation has only started to develop and has not yet been tested in practice. In addition, while the EAEU Agreement took force only on this year, the Working Group studying the question of exhaustion and parallel import is already considering amendments to the EAEU Agreement in the part of the regional exhaustion. Therefore, businesses operating on the EAEU market are advised to receive regular updates on relevant rules and regulations.

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Kazakhstan's accession to the World Trade Organization: new local content requirements

Nurzhan Albanov

On 9 November 2015, in connection with Kazakhstan's accession to the WTO, amendments to the subsoil use legislation came into force and significantly altered the existing local content requirements. Below we summarize the key changes to the requirements for local content in goods, works and services and for personnel.

1. Local content in goods

- Newly concluded subsoil use contracts shall not contain any requirements related to:
  - Local content in goods.
  - Support of Kazakhstan producers (for example, the existing requirement for a conditional reduction of bids received from Kazakhstan producers of goods by 20 percent when determining the winner of a tender).
  - There is a transitional period for subsoil use contracts concluded before 1 January 2015. Any requirements in such contracts regarding the local content in goods and the support of Kazakhstan producers are effective only until 1 January 2021.
- If the term of a subsoil use contract concluded before 1 January 2015 is amended, the "local content in goods" requirements existing thereunder shall be excluded.

2. Local content in works and services

- The minimum local content of works and services in the newly concluded subsoil use contracts shall not exceed 50 percent.
- The minimum local content of works and services in existing subsoil use contracts which were concluded during the period from September 2011 to the date of Kazakhstan's accession to the WTO, shall be decreased down to 50 percent over the next five years (according to the terms of Kazakhstan's accession to the WTO).
- The following requirements remain in effect:
  - Kazakhstan producers of works and services must be granted a putative 20 percent reduction in the price of their bids during the tender procedure.
  - Subsoil users and their contractors shall purchase works nd services from Kazakhstan producers, provided that they satisfy the requirements of design documents and Kazakhstan law on technical regulation.
- The term "Kazakhstan producer of works and services" means individual entrepreneurs and Kazakhstan legal entities, where at least 95 percent of all employees are citizens of Kazakhstan, without taking into account managers and specialists engaged in labor activities in Kazakhstan within the framework of intra-corporate transfers. At the same time, the number of such managers and specialists shall not exceed 25 percent of the total number of all managers and experts in each respective category (to increase to 50 percent after 1 January 2022).

3. Local content in personnel

- When hiring personnel, a subsoil user shall give preference to Kazakhstan citizens, except in the case of managers and specialists. When engaging managers and specialists within the framework of intra-corporate transfers, the number of Kazakhstan citizens shall be at least 50 percent of the total number of employees in each respective category.
- Existing subsoil use contracts, which were concluded during the period from September 2011 to the date of Kazakhstan's accession to the WTO, shall be amended over the next five years in order to bring them into compliance with the above requirement (according to the terms of Kazakhstan's accession to the WTO).

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Accession to the World Trade Organization: Kazakhstan's commitments related to intellectual property

Aliya Seitova

The Protocol on Kazakhstan's accession to the World Trade Organization (WTO) was signed in Geneva on 27 July 2015. In consideration of the accession, Kazakhstan has made specific commitments in 10 different sectors, including intellectual property. As an example, Kazakhstan committed to implement fully the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as of the date of accession.

TRIPS is an international agreement administered by the WTO that sets down minimum standards for many forms of intellectual property regulation. TRIPS remains the most comprehensive international agreement on intellectual property to date.

Specifically, TRIPS requires that the protection and enforcement of all intellectual property rights shall meet the objectives of contributing to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

In order to bring Kazakhstan legislation into conformity with the provisions of TRIPS, a draft Law on Amendments to Some Legislative Acts of the Republic of Kazakhstan in Connection with the Accession to the World Trade Organization was presented to the Majilis of the RK Parliament in June 2015. It is planned that the following legislative acts in the area of intellectual property will be amended:

The principle of 'exhaustion' of trademark rights provides that it is not an infringement of a trademark to use it on goods which have been put on the market within a particular territory by the trademark owner or with its consent.

1. The RK Civil Code (special part), the RK Administrative Code and the RK Trademark Law: amendments that provide for liability in case counterfeit goods are detected, trademarks are removed, goods are destroyed, except for cases where the right holder requests the transfer of such goods;

2. The RK Patent Law: amendments that provide for the terms of issue for a compulsory license and the terms of use for items of industrial property without the consent of the right holder;

3. The RK Health Code: amendments that provide for requirements prohibiting the disclosure of information use in the registration of an original pharmaceutical: an applicant for registration of an original pharmaceutical will be provided a period of six (6) years within which no other pharmaceutical containing the new chemical substances may be registered with a reference to the testing data and other inside information developed by the applicant of the original pharmaceutical.

The RK Parliament is expected to ratify the accession documents by 31 October 2015. Kazakhstan will become a fully-fledged member 30 days after it notifies the WTO of the ratification.

Aliya Seitova
Associate, Patent Attorney

Antimonopoly regulation of tenders

Elena Maksimenko, Akylbek Kussainov

In Kazakhstan, the regulation of tender procedures, both public and private, is generally divided into four categories:

1. Antimonopoly regulation of tenders

Antimonopoly regulation of tenders is carried out by the antimonopoly body – the Committee of the Ministry of the National Economy of RK for the Regulation of Natural Monopolies and Protection of Competition, and its territorial units:

- Under the RK Law on Natural Monopolies and Regulated Markets (Natural Monopolies Law): with respect to purchases, the expenses for which are taken into account in approving tariffs (prices, charge rates) or tariff maximum levels and tariff cost sheets for regulated services (products, works) which are the subject of a natural monopoly.
- Under the RK Law on Competition (Competition Law): in terms of any anticompetitive agreement between market participants, such as:

  a) horizontal agreements, i.e. those which infringe upon the legitimate rights of consumers and/or result/may result in the increase, decrease or maintenance of prices at tenders, or distortion of the results of tenders, auctions or trading, including by way of separation by lots;

  b) agreements reached in any form, which lead or may lead to the restriction of competition, including those related to the distortion of the results of tenders, auctions or trading due to the breach of the established procedure for conducting thereof, including by way of separation by lots.

Antimonopoly regulation of tenders conducted in accordance with the RK Law on Natural Monopolies and Regulated Markets is carried out by the antimonopoly body in exercising the following powers vested upon it by the Law:

a) Canceling the results of a tender held by a natural monopolist before it enters into an agreement with the winner of a tender conducted in violation of the RK legislation and obliging it to hold a new tender;

b) Rejecting an application by a natural monopolist for the approval of tariffs (prices, fee rates) or their maximum levels if any violation is found in the course of examination of such application by the authorized body;

c) Initiating a change in tariffs (prices, fee rates), or maximum levels thereof, for regulated services (goods, work) of a natural monopolist, and approving of a temporary compensating tariff to reimburse losses to consumers caused by the natural monopolist, if the authorized body found violations resulting in losses to consumers during the period when such tariffs (prices, fee rates) or their maximum levels have been applied.

Experience shows that the antimonopoly body rarely applies the first measure, while the second measure is applied quite often. For example, over the 1st quarter of 2012, the Almaty Oblast Department of the RK Agency on Regulation of Natural Monopolies (the "DRNM") refused two applications for tariff approval submitted by two subjects of natural monopoly on the basis of a violation by the subjects of a natural monopoly of the requirement to hold a tender for the regulated services of water supply system and access roads.

Antimonopoly regulation of tenders under the Competition Law is carried out by the antimonopoly body in relation to both tenders conducted in relation to government purchases, and tenders conducted by commercial entities. Under this Law, regulation is effected in two ways:

1) Regulating horizontal agreements which lead to an increase, decrease or maintenance of prices at tenders, distortion of the results of tenders, auctions or trading, including by way of separation by lots. The negative consequences of such violation of the antimonopoly legislation include the infringement upon the legitimate rights of consumers of goods, work and services.

Bearing in mind that the above rule was introduced recently, as from 6 March 2013, it is rarely applied in practice.

2) Regulating agreements which distort the results of tenders, auctions, contests as a result of the violation of the established procedure, which includes separation of lots, resulting in the restriction of competition.

Notwithstanding the fact that it is within the competence of the antimonopoly body to prevent the conclusion of anticompetitive agreements, the antimonopoly body does not take part in tenders. Usually the antimonopoly body is notified of a violation of a tender procedure by public bodies, the media, private citizens, legal entities as well as by way of actual discovery of the event of an antimonopoly violation. Often the motivation behind a notification to the antimonopoly body made by a market participant is to remove unfair competition. Given that, it seems that the market participants tend not to be fixed with administrative liability for anti-competitive agreements entered into as a result of tenders. The competition authority has a poor record when it comes to bringing market participants to administrative liability for anticompetitive agreements entered into as a result of or in connection with tenders.

We note that application of the law in this area has not yet been laid down. However, it is already clear that in order to avoid the objections of the courts in the course of inspections of the procedure of the tender for its legality and any violations, the antimonopoly body has the right to engage experts from other State bodies and cooperate with law enforcement bodies. In other words, having detected the violations in the course of a tender, experts from the authorized bodies of public revenue (Financial Control Committee, Public Revenue Departments, etc.) issue administrative protocols and examine administrative materials. After receipt of the results of the administrative case, and review of the content of agreements of the tender participants and upon completion of the antimonopoly

investigation, the antimonopoly body may issue an administrative protocol under Part 1 of Article 159 (i.e. "Anticompetitive agreements") of the new Administrative Code and forward it to the courts for examination.

2. Regulation of state procurement

In Kazakhstan, the state procurement procedure is regulated by the authorized body, which is the State Procurement Committee of the RK Ministry of Finance, and, accordingly, the implementation and control functions are performed by the Financial Control Committee of the RK Ministry of Finance .

3. Regulation of purchases of goods, work, services in the course of subsoil use operations

The acquisition of goods, work and services in the course of subsoil use operations is carried out through tenders (Article 77 (part 1) of the RK Law on Subsoil and Subsoil Use) via the state informational system *'Register of Purchases of Subsoil Users'*, the coordinator and operator of which is the National Agency for the Development of Local Content Joint Stock Company (NADLoC) – whose shareholder is the Ministry for Investment and Development of the RK.

4. Purchases by Samruk-Kazyna National Welfare Fund JSC

In Kazakhstan, the area of government purchases includes, along with the state bodies, agencies and enterprises, joint-stock companies where the government holds a controlling share, i.e. national companies and their affiliated legal entities where 50% or more of the shares belong to the state.

Tenders held by the aforementioned companies are regulated by the RK Law on the National Welfare Fund, the Rules for the Centralized Procurement of Goods, Work and Services by Samruk-Kazyna JSC and the organizations, the 50% or more of voting shares of which are owned or held in trust by Samruk-Kazyna JSC (as approved by Decision No. 02/14 of the Board of Samruk-Kazyna JSC dated 22 January 2014 and as amended on 24 June 2014), the Rules for the Procurement of Goods, Work and Services by Samruk-Kazyna National Welfare Fund and organizations, the 50% or more voting shares of which are owned or held in trust by Samruk-Kazyna JSC (as approved by Resolution No. 80 of the Board of Directors of Samruk-Kazyna National Welfare Fund dated 26 May 2012, as amended as of 19 June 2015).

In the above case, the Authorized Body responsible for procurement of goods, work and services is represented by a business unit of the Fund and/or by a subsidiary to be determined by the Fund's Management Board. The Tender Commission is the collective body established by a Customer/ procurement arranger (unified procurement arranger) for conducting procurement by way of a tender. Customers may appeal against audit acts of the Authorized Body by applying to the commission in charge of reviewing complaints on procurement issues, established within the Fund.

Elena Maksimenko

Associate

Elena represents clients in disputes with various state authorities. Her clients include businesses in the consumer goods, food and beverages, telecommunications, and energy/natural resources sectors. In addition to dispute resolution, she also advises on competition, employment, corporate and regulatory issues.

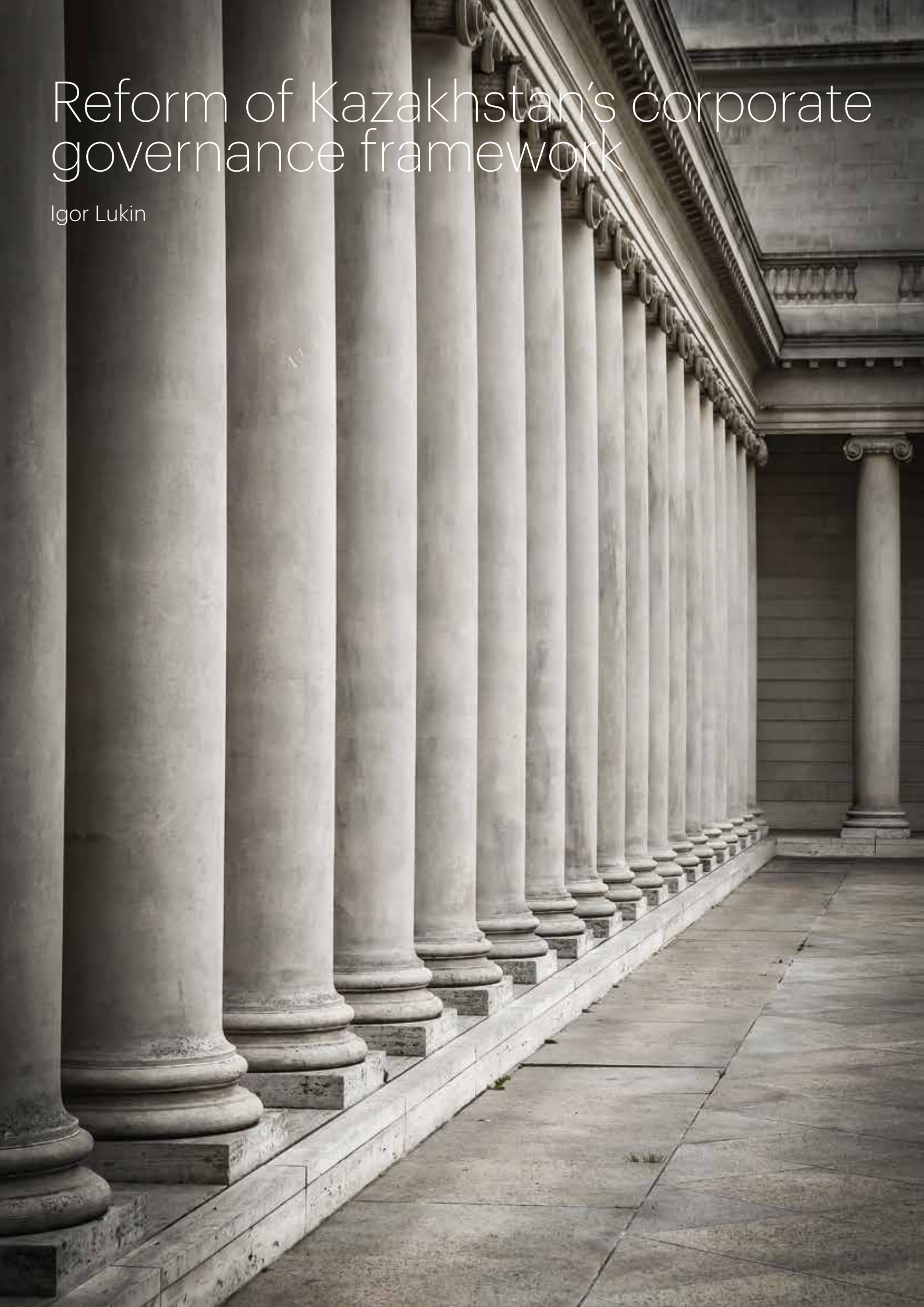
Akylbek Kussainov

Associate, Head of Dentons' Kazakhstan Competition Practice

Akylbek focuses on real estate and corporate/commercial law with a particular focus on competition issues. His 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.

Reform of Kazakhstan's corporate governance framework

Igor Lukin



One of the expected draft laws that will soon be submitted to the Parliament of the Republic of Kazakhstan is the draft Law "On Amendments to Some Legislative Acts of the Republic of Kazakhstan on Issues of Corporate Governance" (hereinafter, the **Draft Law**). Its purpose is to improve the Kazakhstan corporate governance framework and bring it into line with the world best standards. The text of the Draft Law as of the date of the writing of this article was not published. However, based on the concept of the Draft Law (hereinafter, the **Concept**), available from open sources,[24] we can already form our first opinion on the key areas of the proposed reform.

The most important, in our view, set of changes will be aimed at "separation of powers, functions and responsibilities of the bodies of a joint stock company." There is no doubt that for the purposes of corporate governance a balanced distribution of authorities between the bodies of a company is crucial. In our opinion, such changes must first address the issue of strengthening the control functions of the board of directors of Kazakhstan joint-stock companies. One of the main global trends in corporate governance development is to strengthen the control role of the board of directors of a single-tier board structure (*towards which the Kazakhstan board structure gravitates*).

Despite this, in the current edition of the JSC Law, very little attention is given to the control function of the board of directors. For example, the law does not establish such powers of the board of directors as the possibility to check the activities of the executive body at any time or appeal the decisions of the executive body in court. Another fundamental problem is that the board structure in Kazakhstan joint-stock companies as a whole is deformed: it does not have any flexibility of a single-tier board structure (*mandatory creation of an executive body*), or strict division of the functions of control and management of a two-tier board structure (*the chief executive officer has the right to be a member of the board of directors and its committees*.) In this respect the Concept notes that the JSC Law does not reflect the general principle of delegation of authority, and that the board of directors should have full authority to manage the joint stock company and control its operating activity. On the basis of these statements, one may assume that the Kazakhstan board structure will be changed with a view to further approximation to the classical one-tier board structure. Then the formation of an executive body of a joint stock company may cease to be mandatory. However, given the depth of this change, it seems unlikely to us at this stage of the development of corporate legislation of Kazakhstan.

Another area of the reform is closely related to the previous one, it is indicated in the concept as "a clear definition of the purpose of an independent director." The Concept rightly points to a formal approach to the use of the institute of independent directorship in Kazakhstan and, among other things, it proposes to define clearly the functions of an independent director and a number of the mandatory qualification criteria. These measures, of course, can have a positive influence on further development of corporate governance in Kazakhstan. However, in our opinion, the problem of independent directorship in Kazakhstan lies on a deeper system level. First of all, one must understand why independent directors in Kazakhstan, in most cases, are not

[24] www.online.zakon.kz Dossier on the draft Law of the Republic of Kazakhstan On Amendments to Some Legislative Acts of the Republic of Kazakhstan on Issues of Corporate Governance

effective and are included in the board of directors exclusively under the pressure of the requirements of the JSC Law (box-ticking approach). Among the many issues underlying this inefficiency, for example, we can note dependence of "independent directors." In the vast majority of joint stock companies in Kazakhstan, independent directors—as well as other board members—are appointed and dismissed by the decision of the sole or dominant shareholder. In such circumstances, one cannot speak about independence of a director, even if he meets the independence criteria set forth in the JSC Law. With such direct dependence, "independent directors" are powerless to fulfill one of their central functions - to ensure that the interests of all shareholders, and first of all minority shareholders, are respected. This issue, in our opinion, should be one of the first on the agenda of the reform to be discussed.

The Draft Law provides for amendments to the Kazakhstan Institute of Committees of the board of directors. The Concept only sets the aim of "specification of the functions of the board of directors committees, taking into account international standards." In our opinion, regulation of committees of the board of directors in the JSC Law is one of the perfect examples of inconsistent implementation of an Anglo-American Institute in the corporate governance system of Kazakhstan. Firstly, we have here a misunderstanding of the purpose of the institution by the legislator. Committees of the board of directors appeared and developed in the framework of the Anglo-American system of corporate governance as mechanisms of enhancing the independence of a one-tier board of directors from the management of the company. The most important committees recognized in international theory and practice are as follows: an audit committee, remuneration committee and nomination committee. Their aim is to establish effective control over the management of the company. Despite this, the main function of the committees of the board of directors under the JSC Law is advisory and consists in preparing recommendations for the board of directors. The difference of Kazakhstan legislation from international best practices is most evident in the fact that the head of the executive body may be a member of any committee of the board of directors. Another drawback is that any and all joint companies are obliged to have at least one committee of the board of directors. At the same time the world best practice requires formation of committees of the board of directors only in those cases where an agency problem arises in the company, and it is necessary to establish control over the management, for example, in the case of listed companies. In Kazakhstan, however, the majority of private joint stock companies have a sole or dominant shareholder who independently carries out control over the management or the manager-shareholder. In such circumstances, committees of the board of directors may not only be unnecessary, but also burdensome. This conclusion is to some extent true of independent directors discussed above. Unfortunately, it is impossible to understand from the content of the Concept, whether these problems will be taken into account in the drafting of the Draft Law.

Another set of changes will have as its subject the institute of fiduciary duties of directors and officers of a joint stock company. The current edition of the JSC Law contains some elements of the institution, such as prohibition from the use by the directors and officers of assets of the joint stock company for their personal benefit and the obligation to act in the interests of the joint stock company. However, there is no institute of fiduciary duties as a single integral set of norms of Kazakhstan legislation. For example, the JSC Law lacks some important aspects of the duty of loyalty, does not establish the duty of care, does not impose the burden of proof on the directors and officers, etc. In addition, it should be understood that the institution of fiduciary duties is perhaps the most complicated mechanism for application in corporate governance. The most important condition for its effective use is the availability of competent and influential court that has sterling knowledge of the doctrine of fiduciary duties. In Kazakhstan, this condition is absent. It is also necessary to remember that the concept of fiduciary duties is based on the perception of the company's managers as agents, and the shareholders as the owners-principals. Such interpretation is alien to Kazakhstan corporate law. Therefore great care must be taken in implementing this typically Anglo-

Saxon institute in the legal system of Kazakhstan. We believe that, along with the general principles of fiduciary duties, it is necessary to provide for a number of specific actions (omissions), which will be the grounds for responsibility of the directors and officers of a joint stock company. Such regulation, for example, is used in Germany. It should also be noted that this approach, although to a very limited extent, is already established in Article 63 of the JSC Law.

The Draft Law provides for changes in the status of the corporate governance code. Currently, the Model Code of Corporate Governance adopted in 2005 does not perform the tasks that are assigned to such samples of soft law in international best practice. This is primarily due to the lack of mechanisms to ensure compliance with the recommendations of the Code. One of the objectives of the reform will be to create such mechanisms. The most important innovation of the corporate governance system in Kazakhstan will be the introduction of the recognized international principle of "comply or explain." While this is not apparent from the text of the Concept, we can assume that this principle will be enshrined at the legislation level. This approach is used, for example, in German corporate law. However, it remains unclear what joint stock companies will be subjects of the corporate governance code. In the international best practice, the principle of "comply or explain" is generally applicable only to listed companies. We believe that this trend should also be established in Kazakhstan. Along with the changes in the legislation, the Model Code of Corporate Governance will be updated. We hope that specific guidelines for different groups of joint stock companies (listed companies, family businesses, companies of the quasi-public sector, etc.) will also be formulated.

Other important aspects of the corporate governance system in Kazakhstan, which according to the Concept will be changed, include: disclosure by joint stock companies of information in the securities market and risk management in the joint stock company, etc.

The purpose of the Draft Law, according to the Concept, is "improving the legal framework of Kazakhstan on corporate governance taking into account international principles and standards of corporate governance." Given the significance of the corporate sector and the need for integration of Kazakhstan into the global economy, the importance of harmonization of Kazakhstan legislation on corporate governance with recognized world samples seems to us unquestionable. It should be noted, however, that implementation of corporate governance institutions of developed economies of the world by way of their blind copying usually does more harm than good. That is why in introduction of the principles of best practices, the national peculiarities of the system of corporate governance should be taken into account. We can only hope that this approach will be the basis for the proposed reform of Kazakhstan corporate governance framework.

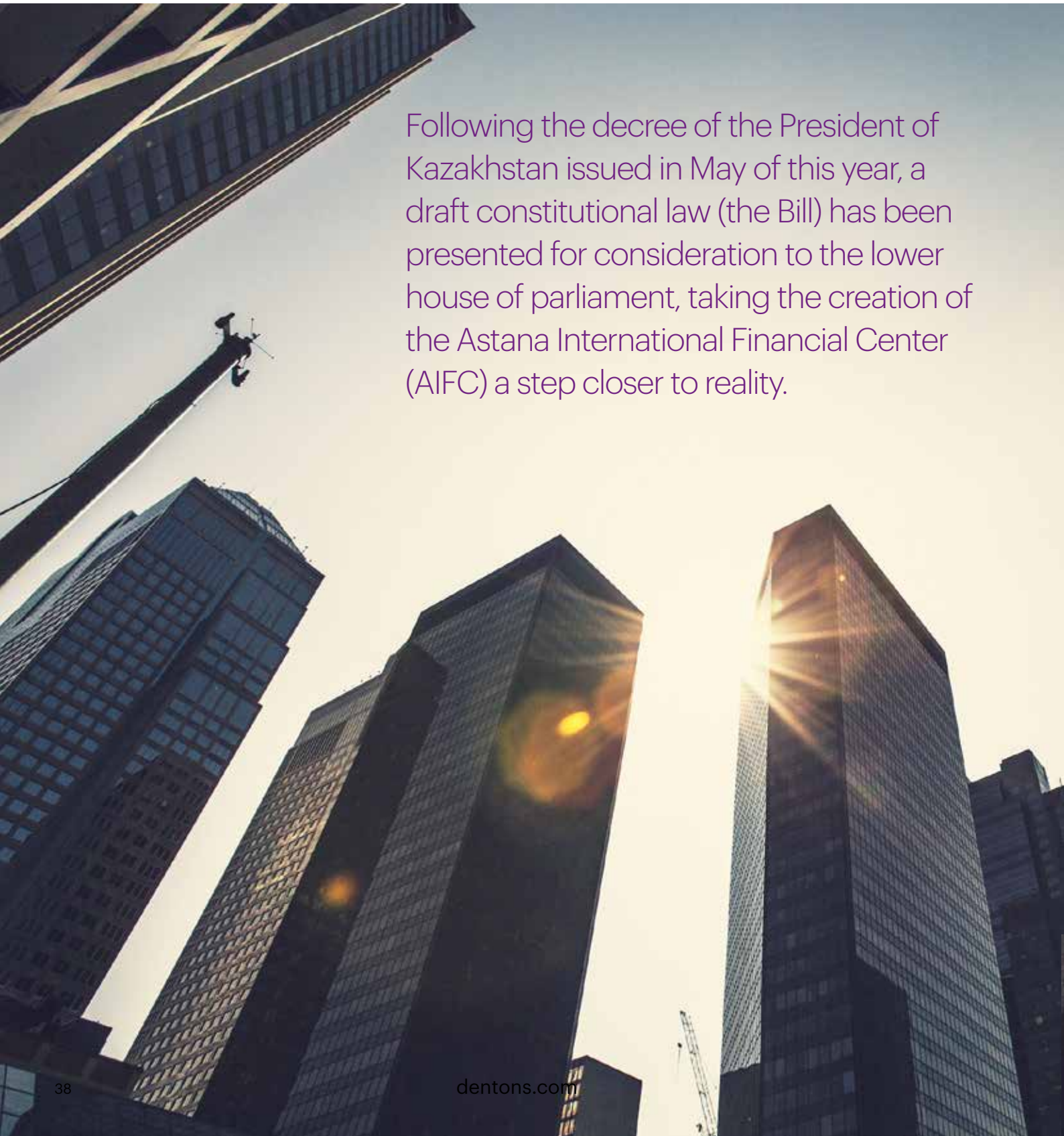
Igor Lukin

Junior Associate

Igor provides advice on M&A and corporate governance matters to clients across various industry sectors, with an emphasis on the financial and energy sectors.

Creation of Astana International Financial Center

Adam Kaucher



Following the decree of the President of Kazakhstan issued in May of this year, a draft constitutional law (the Bill) has been presented for consideration to the lower house of parliament, taking the creation of the Astana International Financial Center (AIFC) a step closer to reality.

The Bill sets out the objectives of the AIFC, which will be to promote investment, develop the markets in banking, insurance and Islamic finance, develop the securities market in Kazakhstan and to develop financial and professional services in accordance with best international practice, leading to the recognition of Astana as an international financial center.

The AIFC will constitute a financial 'free zone' within a physical area to be delineated in future. It is expected that eventually the Center will be located on the site currently being developed to house Expo2017. Participants in the Center will be entitled to benefit from exemptions from corporate and individual income tax, and from a relaxed visa and work permitting regime for their senior employees.

The Center will have its own legal system in certain areas, which will, according to the Bill, be based on the principles and rules of English law and/or the standards of leading global financial centers. It is expected that the system of laws which are to be developed over the next two years will bear quite some similarity to the system introduced in the Dubai International Financial Center, in which separate laws governing, among others, civil law relations with and between participants of the Center, the formation, governance and registration of companies, financial services, employment relations, to name a few, provide a system separate from national law.

The Center will have its own two-tier court system to apply these laws, again applying the procedural principles and norms of the justice system of England and Wales, or the standards of leading global financial centers. An agreement has been entered into with the DIFC Court in Dubai to advise and assist in the establishment of the new court system. An international arbitration center will also be created within the AIFC. It is expected that foreign judges and arbitrators will be invited to sit in these courts and tribunals.

The operating language in the courts, and in the administration of the Center itself, will be English. The AIFC's laws are also to be developed in English.

The Center will be overseen by an Administration to be created under the auspices of the National Bank, which shall be responsible for the development and operation of the Center, including the development of its laws for approval by the governing body of the AIFC - the Center Governance Council - to be chaired by the President of Kazakhstan.

The Bill, when passed, will create a constitutional law which makes the creation of the Center possible and permits the derogation from national laws. The detailed establishment of the Center's institutions, their rules, and the laws which will be adopted in the Center will follow in the two years following the passing of this law.

Adam Kaucher

Counsel

Adam's practice to date has been built around a core of private and public company M&A work, advising buyers, sellers and funders. He has advised on many public markets transactions including AIM IPOs, pre-IPO fundraisings and secondary fundraisings. He has for many years advised on transactions in CIS countries. He has solid mid-market 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. perspectives in advance of M&A transactions, as well as counseling on anti-corruption issues.

Rule of Law in Kazakhstan: maintaining momentum

Aigoul Kenjebayeva

Twenty years ago, Kazakhstan's Constitution was adopted, which declared it a "rule of law" country. While Kazakhstan has not yet met this standard, it is moving quickly toward this goal. Kazakhstan is a unique country in many respects. Apart from its vast territory, rich natural resources, small population, multiple nationalities and well-educated society, Kazakhstan is also known as a country that was able to build, rapidly and successfully, a strong state with a foundation for future development. During the years of independence, we have witnessed the country's successes and failures in various political and economic spheres, but the fact that the country has continued to move forward is very encouraging.

Once an independent state, Kazakhstan introduced a legal system that was quite liberal and encouraged foreign investment. Over time, conservatism and bureaucracy, as well as Soviet heritage and other factors, overtook progress. Kazakhstan was trying to find its way to develop through trial and error. We have now started to see changes that bring us closer than ever to reaching the goal of having a "rule of law" country.

Over the past 20 years, civil society became more mature and conscious of its desires, values and preferences, and the Government became more attuned to society's wishes. The global economic crisis contributed to a better understanding of the problems and challenges, which as a result, started unprecedented reforms in all spheres of Kazakh society and economics. Legislative and judicial systems reforms were the most important, in addition to certain organizational reforms.

Significant measures aimed at improving the investment climate were introduced one year ago, and a path toward more significant reforms is beginning. This is reflected in the recently announced Presidential Program, "100 Concrete Steps."

"Assurance of the Supremacy of Law" is included in this program as one of the most important tasks, and 19 of the 100 steps are devoted to concrete measures related to the rule of law (steps 16 to 34). Most of these steps are aimed at improving the judiciary. An independent and professional judiciary has long been recognized as one of the most important elements of a rule of law system. However, little had been done in Kazakhstan to achieve this goal. The Presidential Program includes a number of steps that could be characterized as revolutionary, as they aim to change the mindset of decision makers. The Presidential Program appears to promote the following main principles:

Improved access to the judicial system

This principle is not new, but this is the first time it has been brought forward as a cornerstone of judicial reform. Although the Program itself mentions this principle in the context of reducing the number of court instances from five to three, it should be noted that the supporting legislation now being drafted (in

particular the new Civil Procedure Code), already contains numerous provisions promoting this principle.

Such proposals could simplify procedures and ensure very quick resolution of disputes. However, the legislator should be cautioned that speed and simplicity are not always desirable, since the provision of justice remains the main goal. Quick and simple procedures could be an impediment to justice where multiple, especially foreign, parties happen to be involved. This would require time for preparing for the case, obtaining apostilled Powers of Attorney, translating lengthy documents and so on. The law should allow for adequate argument and deliberation in complex cases.

Stricter requirements for judges

The Program includes steps to tighten the requirements for judges.

Firstly, the qualification requirements for candidate judges are to be increased. For instance, the "Draft Law on Amending and Supplementing the Constitutional Law On the Judicial System and Status of Judges" that is now under discussion in the Parliament provides that the age of a candidate judge must be at least 30 years old instead of 25 years in the current legislation or establishes the physiological test and polygraph examination the successful completion of which is a prerequisite for admission of a candidate.

Secondly, the level of accountability of judges is to be increased. For example, the mentioned Draft Law provides that the appeals of individuals and legal entities could be a basis for initiation of a disciplinary investigation against a judge or establishes a mechanism for assessment of the professional activity of the judge.

Utilizing international expertise

The Program announced the creation of an International Council at the Supreme Court consisting of reputable foreign judges and lawyers. The aim of the Council would be to assist with the introduction of international standards into the judicial system. This is a truly revolutionary idea, since the Supreme Court was considered a very conservative and closed organization. Whether this idea will take hold or whether this Council will have any significant impact is unpredictable. However, the door is open, and the international legal community has a great chance to provide support to Kazakhstan in its judicial reform.

Treatment of investment disputes

The Kazakh judicial system is often criticized for not being able to consider disputes with foreign investors fairly and professionally. In many cases involving investors against the state authorities, courts are biased in favor of the authorities, based on a quest for greater revenue in the state budget. Therefore, improving the judiciary requires a recognition that the judiciary is not to be viewed as a source of budget financing, either formally or informally.

Courts should not be concerned with revenue streams for the state budget when establishing court fees or penalties and deciding substantive matters. The amount of penalties and other monetary awards in court judgments should not be included as an income source in the state budget.

Another problem when considering disputes with investors, in particular with foreign investors, is that many judges are not familiar with international standards, basics of international law, or international business transactions. The Program envisions steps to improve the selection process for judges, enhance educational programs and ensure compliance with ethics rules.

The Program includes establishment of a distinct type of judicial proceedings with regard to all civil disputes related to investment activities – the investment judicial proceedings. The Supreme Court will have exclusive competence to consider investment disputes involving large investors. For this purpose a special Investment Panel of the Supreme Court will be created. The Specialized Court of Astana City will be authorized to hear as the first instance all other investment disputes with no large investors

Twenty years ago, Kazakhstan's Constitution was adopted, which declared it a "rule of law" country.

involved, where the Supreme Court will serve as an appellate instance.

The idea of creating special proceedings for consideration of disputes involving large investors is revolutionary. Considering the circumstances, this could be viewed as recognition that the judicial system is not well equipped to provide justice to investors. In this sense, the creation of this Panel is a bold step by the state in recognizing inherent problems in the judicial system and working to find ways to resolve them. Therefore, the creation of this Panel should be supported as a first step in testing new approaches. However, it is essential that these new principles be expanded to the rest of the judicial system.

Creation of the investment judicial proceedings is described in more detail in the Draft Civil Procedure Code that is now under discussion in the Parliament. The scope of competence of the investment courts is still not clear. This idea will only work if the "Law on Investments" is significantly amended to expand and clarify the definition of "investor". Without such changes, the investment courts will have very little to do as the current definition is too narrow and would actually only cover a small number of companies.

International Financial Center

One of the boldest and promising steps of the Program is creation of the Astana International Financial Center ("AIFC") in the capital of Kazakhstan with Dubai International Financial Centre serving as a prototype. Notwithstanding the fact that the Program does not include this into the "rule-of-law-steps", it will have a significant impact, negative or positive, on the law and judicial systems of Kazakhstan.

The key specific feature of AIFC is that its governing law will be English law. It will be a distinct law system independent from the general statute law of Kazakhstan. Following this, an independent court with its own jurisdiction will be established to settle disputes involving AIFC members in accordance with English law. The AIFC court itself will consist of foreign judges, and the English language will be used throughout the court proceedings.

The reform is going to be a deep one. Significant amendments are to be made to a wide number of major legislative acts, in particular the Constitution, Civil Procedure Code, Tax Code, etc. The "Draft Law on Amending and Supplementing the Constitutional Law on the Judicial System and Status of Judges" that is now under discussion in the Parliament provides for a special status of AIFC's court and its independence from the judicial system of Kazakhstan.

State accountability and self-regulated organizations

The Program pays close attention to the mechanisms for accountability of the state through a number of steps, including the creation of "The State for Citizens," a state corporation similar to the "Canada Service" and "Centrelink" (Australia). Involving society in the management of the country's affairs is an important task.

The transfer of certain functions to self-regulated and non-governmental organizations is now an important principle of the reforms. One such organization is the Kazakhstan Bar Association, which should be given the opportunity to play a serious role in the implementation process as a whole, as well as in the parts related to the rule of law.

In conclusion, this Program shows that Kazakhstan is making serious efforts to break through to become a true "rule of law" country. Undeniably, not everything necessary has been done or is planned. However, the country is moving in the right direction, which is important, and this momentum should be maintained.

Aigoul Kenjebayeva

Managing Partner

With more than 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*.

Tax havens list

The list of jurisdictions with the preferential taxation, approved by the Resolution of the Government of the Republic of Kazakhstan No.595 of 29 December 2014 (with amendments as of 2 July 2015)

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
4 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 Republic of Mauritius
27 Islamic Republic of Mauritania
28 The Portuguese Republic (only with respect to its Madeira Island)
29 Republic of Maldives
30 Republic of the Marshall Islands
31 The Principality of Monaco
32 Malta
33 Mariana Islands
34 The Kingdom of Morocco (only with respect to the city of Tangier)
35 Union of Myanmar
36 Republic of Nauru
37 Kingdom of the Netherlands (only with respect to the island of Aruba and the dependent territories Antilles islands)
38 Federal Republic of Nigeria
39 New Zealand (only with respect to the Cook and Niue islands)
40 United Arab Emirates (only with respect to the city of Dubai) excluded pursuant to the order of the RK Ministry of Finance dated 27 February 2015 No.139
41 Republic of Palau
42 Republic of Panama
43 Independent State of Samoa
44 The Republic of San Marino
45 Republic of Seychelles
46 Saint Vincent and the Grenadines
47 Federation of St. Kitts and Nevis
48 State of Saint Lucia
49 United Kingdom of Great Britain and Northern Ireland (only with respect to the following areas):
a. Islands of Anguilla

Kazakhstan: Double taxation treaties with 49 Countries

Currently Kazakhstan has a network of 49 ratified double taxation treaties with various nations that provide for discounted tax rates. The table below outlines the applicable tax rates with respect to dividends, interest, royalties and net income:

	Payee resident in	Dividends (%)	Interest (%)	Royalties (%)	Net income tax (%)
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	Macedonia	5/15	10	10	5
26	Malaysia	10	10	10	10
27	Moldova	10/15	10	10	5
28	Mongolia	10	10	10	10
29	Netherlands	5/15	10	10	5
30	Norway	5/15	10	10	5

31	Pakistan	12.5/15	12.5	15	15
32	Poland	10/15	10	10	10
33	Qatar	5/10	10	10	10
34	Romania	10	10	10	15
35	Russian Federation	10	10	10	10
36	Singapore	5/10	10	10	5
37	Slovakia	5/10	10	10	5
38	Spain	5/15	10	10	5
39	Sweden	5/15	10	10	5
40	Switzerland	5/15	10	10	5
41	Tajikistan	10/15	10	10	10
42	Turkey	10	10	10	10
43	Turkmenistan	10	10	10	5
44	UAE	5/15	10	10	5
45	Ukraine	5/15	10	10	5
46	United Kingdom	5/15	10	10	5
47	United States	5/15	10	10	5
48	Uzbekistan	10	10	10	15
49	Vietnam	5/15	10	10	5

Tax Treaties not yet in force					
	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

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

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
1.	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
2.	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
3.	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	Order No. 12 of the RK General Prosecutor dated April 12, 2007
4.	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
5.	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
6.	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
7.	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
8.	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
9.	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, 1995
10.	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
11.	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

12.	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
13.	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
14.	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
15.	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
16.	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
17.	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
18.	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
19.	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
20.	Agreement between the Republic of Kazakhstan and Czech Republic on Mutual Legal Assistance regarding Criminal Cases, Astana, June 6, 2013	RK Law No. 145-V dated November 25, 2013
21.	Agreement between the Republic of Kazakhstan and Kyrgyz Republic on Mutual Legal Assistance regarding Civil and Criminal Cases, Almaty, August 26, 1996	RK Law No. 142-1 dated June 30, 1997
22.	Agreement between the Republic of Kazakhstan and the Republic of United States of America on Mutual Legal Assistance regarding Criminal Cases, Washington, February 20, 2015	RK Law No. 331-V dated July 16, 2015
23.	Agreement between the Republic of Kazakhstan and Socialist Republic of Vietnam on Mutual Legal Assistance regarding Civil Cases, Hanoi, October 31, 2011	RK Law No. 186-V dated April 9, 2014
24.	Agreement between the Republic of Kazakhstan and the Republic of Bulgaria on Mutual Legal Assistance regarding Criminal Cases, Sofia, 2014	RK Law No. 350-V dated September 21, 2015
25.	Agreement between the Republic of Kazakhstan and Italian Republic on Mutual Legal Assistance regarding Criminal Cases, Astana, 2015	RK Law No. 349-V dated September 21, 2015
26.	Inter-American Convention on Mutual Assistance in Criminal Matters, Nassau, 1992	RK Law No. 351-V dated September 21, 2015
27.	Agreement between the Republic of Kazakhstan and Romania on Mutual Legal Assistance in Criminal Matters, Bucharest, 2014	RK Law No. 352-V dated September 22, 2015

List of agreements on stimulation and mutual protection of investments

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

20.	Belgium-Luxembourg Economic Union, Almaty, April 16, 1998	RK Law No. 23-II dated December 30, 1999
21.	French Republic, Paris, February 3, 1998	RK Law No. 77-II dated July 5, 2000
22.	Republic of Uzbekistan, Almaty, June 2, 1997	RK Government Resolution No. 1309 dated August 29, 1997
23.	Kyrgyz Republic, Almaty, April 8, 1997	RK Law No. 174-1 dated October 28, 1997
24.	Republic of India, Deli, December 9, 1996	RK Law No. 226-1 dated May 8, 1998
25.	Georgia, Tbilisi, September 17, 1996	RK Law No. 199-1 dated December 5, 1997
26.	Republic of Azerbaijan, Baku, September 16, 1996	RK Law No. RK Law No. 198-1 dated December 5, 1997
27.	Malaysia, Kuala Lumpur, May 27, 1996	RK Law No. 120-1 dated June 11, 1997
28.	Republic of Romania, Bucharest, April 25, 1996	RK Law No. 43-I dated November 22, 1996
29.	Republic of Korea, Almaty, March 20, 1996	RK Law No. 45-I dated November 22, 1996
30.	Islamic Republic of Iran, Almaty, January 16, 1996	RK Law No. 17-I dated July 2, 1996
31.	Israel, Jerusalem, December 27, 1995	RK Law No. 22-1 dated July 12, 1996
32.	United Kingdom of Great Britain and Northern Ireland, London, November 23, 1995	RK Law No. 44-I dated November 22, 1996
33.	Republic of Hungary, Budapest, December 7, 1994	Decree of the President of the RK No. 2276 dated May 12, 1995
34.	Mongolia, Almaty, December 2, 1994	Decree of the President of the RK No. 2249 dated April 29, 1995
35.	Republic of Poland, Almaty, September 21, 1994	Decree of the President of the RK No. 2277 dated May 12, 1995
36.	Ukraine, Almaty, September 17, 1994	Decree of the President of the RK No. 2218 dated April 20, 1995
37.	Republic of Lithuania, Almaty, September 15, 1994	Resolution of the RK Supreme Council No. 299-XIII dated February 20, 1995
38.	Swiss Federal Council, Almaty, May 12, 1994	RK Law No. 228-1 dated May 8, 1998
39.	Arab Republic of Egypt, Cairo, February 14, 1993	Decree of the President of the RK No. 2460 dated September 15, 1995
40.	People's Republic of China, Beijing, August 10, 1992	Resolution of the RK Supreme Council dated June 8, 1994
41.	Republic of Turkey, Almaty, May 1, 1992	Resolution of the RK Supreme Council No. 1943-XII dated January 29, 1993
42.	Kingdom of Spain, Madrid, March 23, 1994	Decree of the President of the RK No. 2240 dated April 26, 1995
43.	Italian Republic, Rome, September 22, 1994	Decree of the President of the RK No. 2294 dated May 22, 1995
44.	Republic of Macedonia, July 2, 2012	Draft law on ratification being considered

Dentons Corporate Counsels' Club

The Corporate Counsels' Club serves as a forum for our clients to meet for discussion, knowledge-sharing and informative presentations by Dentons' lawyers.

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.

As always, your suggestions are welcome

To provide you with the maximum benefit from these sessions, we are always happy to hear from you about 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 Corporate Counsels' Club had another consistent year of dynamic meetings to address a number of topics, share best practices and approaches to challenges.

29 April 2015

Changes to the subsoil law: two steps forward, one step back?

In light of the recent amendments to the subsoil law, Dentons addressed the issues of concern and importance to companies from the energy and natural resources industry.

The roundtable agenda addressed the following issues:

- The procedure for the acquisition of subsoil use rights: the new rules of the game
- Contract termination: have the risks changed?
- Project documentation and working programs: current procedures and requirements
- Transformation of the contract territory: is there a room for maneuver?

The event was very well attended and received positive feedback from the participants: Shell, JV Inkai, Chevron Munaigas, OMV Petrom, Max Petroleum, Sozak Oil&Gas, Equuspetroleum.


Challenging the status quo.
Dentons. The new Global Elite
law firm created by Salans,
FMC and SNR Denton.*

11 June 2015

Personal data: why it is important

Dentons invited its clients to discuss and look into the contentious and ambiguous issues of collecting and processing personal data together, and to understand what awaits us if the draft amendments to the legislation on personal data are adopted.

Dentons' IP lawyers addressed a number of topics:

- Personal data of employees, customers, counterparties: everything you wanted to know.
- Use by employees of the employer's information system for personal purposes.
- Something new for our clients – self-assessment questionnaires. Check your company's compliance!
- The proposed amendments to the legislation on personal data: there's worse to come!

The participants had a chance to look into contentious issues together with Dentons' lawyers, check whether their procedures for collecting and processing personal data of employees, clients and counterparties comply with the legislation and understand what procedures of data processing should be introduced or changed in their respective companies.

15 July 2015

Changes to the subsoil law: two steps forward, one step back?

At the request of our clients from the uranium mining industry, we held the second round of roundtable discussions devoted to the changes to the subsoil law.

The topics under discussion included:

- The procedure for the acquisition of subsoil use rights: the new rules of the game
- Contract termination: have the risks changed?
- Project documentation and working programs: current procedures and requirements
- Transformation of the contract territory: is there room for maneuver?

28 September 2015

An inside perspective: recent developments in international and domestic arbitration

At the end of September, Dentons had the opportunity to host a roundtable on the recent developments in international commercial arbitration with a special guest speaker, Annette Magnusson, Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) and General Counsel of the SCC.

The event also featured a guest speaker from the Kazakhstan International Arbitrage, Assel Duisenova.

Key topics for discussion included

- Investor-state disputes at the SCC
- Energy disputes and cases involving state and private enterprises
- Arbitration in Kazakhstan: major trends and current practice

The event offered participants an opportunity to raise questions about dispute resolution at the SCC and about international arbitration in general. In addition, all participants received first-hand information about the latest developments in arbitration in Kazakhstan, including proposed changes to the draft arbitration law.

23-24 November 2015

Kazakhstan's accession to the WTO, impact on the economic and integration processes in Kazakhstan and in the region

In November 2015, Kazakhstan became a fully-fledged member of the World Trade Organization (WTO), following 18 years of delicate negotiations.

The membership has raised many questions, such as:

- What are the specifics of Kazakhstan's accession to the WTO?
- What are the conditions, concessions and commitments which the negotiators agreed in certain sectors of the economy?
- What differences are there between the conditions of WTO membership for Kazakhstan, and those for other member states of the Eurasian Economic Union and Kazakhstan's major trading partners
- What are the expected consequences for business in Kazakhstan, and what opportunities may be created?

Dentons' trade law experts represented by the Almaty and Brussels lawyers, Kanat Skakov, Igor Danilov and Stanislav Lechshak answered the above, and many other practical questions, during the one-day sessions in Almaty and Astana held on 23 and 24 November 2015, respectively.

Both events were well attended and received positive feedback from the participants: Agip Karachaganak B.V., BG Kazakhstan, Chevron Munaigas, EBRD, KazRosGas, Kazakhlesprom, Lukoil Overseas Karachaganak B.V., KLPE, NC Astana EXPO-2017, TMK, RG Brands Kazakhstan.

We intend to maintain the same regularity of roundtable discussions in the coming months.

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.

Dentons key service areas in Kazakhstan

Corporate and 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

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

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

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

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Dentons Kazakhstan

In Kazakhstan Dentons has been active for more than 20 years. With offices in Almaty and Astana, the Firm is the largest, and the leading, international full service legal practice in the country with fully qualified legal and professional staff numbering well over 70. Deep practice focus of lawyers allows Dentons to offer competitive prices while securing all the benefits and the highest standards of services of a reputable global law firm.

Dentons is consistently ranked #1 among law firms in Kazakhstan by Chambers Global, The Legal 500, IFLR1000 and Who's Who Legal. The firm secures leading positions in oil and gas, mining, PPP/infrastructure, banking and finance, corporate, M&A, dispute resolution and intellectual property.

First in Kazakhstan in:

- Energy and Natural Resources
- Dispute Resolution

First in Kazakhstan in:

- Energy and Natural Resources
- Dispute Resolution

First in Kazakhstan

- First in Kazakhstan in:
- Financial and Corporate
- Energy and Infrastructure

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