

Kazakhstan

BAKER & MCKENZIE

Doing Business in Kazakhstan



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PREFACE

Baker & McKenzie has provided sophisticated legal services to the world's leading enterprises for more than 50 years.

With a network of more than 3,900 locally qualified, internationally experienced lawyers in 68 offices across 38 countries, we have the knowledge and resources to deliver the broad scope of quality services required to respond effectively to both international and local needs – consistently, with confidence and with sensitivity for cultural, social and legal differences.

Active in the USSR and the Commonwealth of Independent States (CIS) for over 40 years, with offices in Almaty, Baku, Kyiv, Moscow and St. Petersburg, we now have one of the largest legal practices in the CIS, offering expertise (in close cooperation with our offices worldwide) on all aspects of investment in the region including corporate law, banking and finance, securities and capital markets, venture capital, competition law, tax and customs, real estate and construction, labor and employment, intellectual property and dispute resolution.

The hub of our Central Asian practice is in Almaty.

Since gaining independence in 1991, Kazakhstan has adopted new legislation at a rapid pace. It remains a country in transition and its legal system is in continued development. “Doing Business in Kazakhstan” has been prepared as a general guide for organizations operating in or considering investment into Kazakhstan. It is intended to present an overview of the key aspects of the Kazakhstani legal system and the regulation of business activities in this country.

The information contained in this guide is current as of the date below. We will be pleased to provide you with updates on the material contained in this guide, or to provide you with further information regarding a specific industry or area of Kazakhstani law in which you may have a particular interest.

Baker & McKenzie – CIS, Limited 1 January 2009

1. Kazakhstan - An Overview

1.1 Geography

The Republic of Kazakhstan is located in Central Asia and covers an area of 2,724,900 sq. km (1,049,150 sq. miles), roughly the area of Western Europe. Kazakhstan is the second largest republic of the former Soviet Union, after Russia, and the ninth largest country in the world. It borders Russia to the north, the Caspian Sea to the west, Turkmenistan, Uzbekistan and the Kyrgyz Republic to the south and China to the east. Kazakhstan's terrain is primarily steppe, with deserts in the south and center, and mountainous regions in the southeast. The climate is continental, with temperatures ranging from -45°C in winter to $+30^{\circ}\text{C}$ in summer.

1.2 Population

The population of Kazakhstan is approximately 15.3 million, with approximately 1.2 million living in Almaty, the largest city, and a further 605,500 in Astana, the second largest city, making Kazakhstan one of the most sparsely populated countries in the world, with a population density of approximately 5.5 people per square kilometer. Approximately 59.2% of the population is Kazakh, and approximately 25.6% is Russian. Numerous other ethnic groups make up the remainder.

1.3 History

Kazakhstan was originally settled by nomadic tribes who united in the late 15th and early 16th centuries in a political confederation known as the Kazakh Khanate. By virtue of many ethnopolitical and economic factors on the territory of Kazakhstan three ethno-territorial associations were formed: the Senior, Middle and Junior Juzes. The division into juzes was the result of a complex process – the formation of the Kazakh ethnic national group, and left its characteristic stamp on local cultural and political affiliations. The Kazakh Khanate was absorbed into the Russian Empire in the eighteenth and nineteenth centuries and transformed into other forms of governance that reported to Russia. After the Great October Revolution, the Bolsheviks took control over the territory. On 5 December 1936, Kazakhstan was made a constituent republic of the Soviet Union and named the Kazakh Soviet Socialist Republic.

On 25 October 1990, Kazakhstan declared itself an independent sovereign state and on 16 December 1991 Kazakhstan proclaimed its independence.

1.4 Government and Political System

The President of Kazakhstan is Nursultan Nazarbayev, who before being elected as the President in 1991 was appointed as First Secretary of the Communist Party of Kazakhstan in 1989.

Mr. Nazarbayev was first elected as the President on 1 December 1991 for a five-year term. He was then reelected on 29 April 1995 and then his term was prolonged on 10 January 1999. On 4 December 2005, President Nazarbayev was re-elected for another seven-year term.

The President is the head of state and commander-in-chief of the armed forces. The President has primary responsibility for domestic and foreign policy, and represents Kazakhstan in international relations. Under the 1995 Constitution,¹ the President is elected for a term of five years (until June 2007, this term was 7 years) and may be re-elected for a second term. One and the same person may not be elected the President of Kazakhstan more than two times in a row. This limitation does not apply to the First President of Kazakhstan (Mr. Nazarbayev).

The President exercises broad powers under the Constitution, and has the authority to issue decrees, initiate constitutional amendments, dissolve Parliament, veto legislation, appoint and dissolve the Government, and appoint local heads of Government. Under certain circumstances, he may issue decrees which have the force of law.

The legislative branch consists of a bicameral Parliament. The two parliamentary chambers are the Senate (upper chamber) and the Mazhilis (lower chamber). Two senators are elected from each of the individual oblasts (regions),² from the major cities, and from the capital. The President appoints fifteen senators. In accordance with the Constitution, members of the Senate are elected for six-year terms, and members of the Mazhilis for five-year terms. The Mazhilis consists of 107 members, 98 of whom are elected based on political party lists. 9 members are elected by the Assembly of the People of Kazakhstan.

¹ The Constitution of the Republic of Kazakhstan, dated 30 August 1995, as amended.

² There are 14 oblasts: Almaty, Akmola, Aktobe, Atyrau, Pavlodar, Karaganda, Kostanai, Kyzyl-Orda, Eastern Kazakhstan, Western Kazakhstan, Mangistau, Northern Kazakhstan, Southern Kazakhstan and Zhambyl.

The Government is appointed by the President and is accountable to him. The Government is headed by the Prime Minister. At the cabinet level, the Government is comprised of 17 various ministries and 6 agencies.

The courts exercise judicial power in Kazakhstan. The highest appeal court for both criminal and civil (including commercial) cases is the Supreme Court.³

A separate Constitutional Council with seven members is the guardian of the Constitution. Its duties include: reviewing issues regarding the election of the President and members of Parliament, national referenda, issues involving the President (including relieving him of his duties on grounds of treason or for medical reasons), determining whether laws proposed for adoption by Parliament or through international treaties comply with the Constitution, providing official interpretations of the Constitution, and reviewing appeals from the courts of law on constitutional issues.

The political party system is in its initial stages of development. The principal party is Nur-Otan, with other parties including Nagyz Akzhol, the Communist Party, and the National Social Democratic Party.

On the President's initiative, in December 1997, the capital of Kazakhstan moved from Almaty in the southeast of the country to Akmola in the north. In May 1998, the name of Akmola was officially changed to Astana (in Kazakh – "capital"). The Parliament and Government have moved to Astana, but most foreign businesses and many embassies remain in Almaty. The city of Almaty remains the scientific, cultural, financial and industrial center of the country.

1.5 Economy

Kazakhstan is rich in natural resources, most notably oil and natural gas, but also coal and minerals, including iron ore, chromium, uranium, copper, nickel, cobalt, gold and many others.⁴ In addition, Kazakhstan has considerable agricultural potential in both grain and livestock production. Development of these natural resources has been

³ For a more detailed description of the court system, see Section 16.

⁴ Including bauxite, molybdenum, lead, beryllium, tantalum, silver, phosphorous, zinc, manganese, barite, cadmium, arsenic, industrial diamonds and semi-precious gemstones, bauxite and uranium.

hindered by the fact that Kazakhstan is a landlocked country, giving rise to infrastructure and transport cost issues, especially for bulk commodities. Potential export routes are also vulnerable to political and economic instability in neighboring countries. Nevertheless, the abundance of natural resources has attracted considerable interest among international investors, particularly in the oil and gas sectors.

Reforms introduced since 1992 have, among others, largely removed price controls and reduced subsidies, reduced the role of the public sector in the economy, encouraged growth in the industrial and service sectors, liberalized foreign trade, reduced tariffs and promoted export growth, eased capital transfer and exchange controls, encouraged foreign investment, strengthened the independence of the National Bank of the Republic of Kazakhstan and encouraged moves towards full convertibility of the Kazakhstani Tenge (“Tenge” or “KZT”), as well as introducing a reformed tax and customs system.

Kazakhstan’s economic transition from a command economy within the Soviet Union to a nascent market economy has not been smooth. The inefficiencies of the former system, together with Kazakhstan’s antiquated industrial base, led to a significant decline in real GDP during the early transition period. This situation has since improved with real GDP rising steadily since the end of 1999, showing growth for 2007 of 8.5 % as compared with 2006.

The Government of Kazakhstan initiated privatization in September 1991. In 1994, Kazakhstan launched an ambitious program to privatize the state’s major industrial enterprises, particularly in the key mining, metallurgical and power sectors. After 1997, the speed and scale of privatization decreased, partly due to Government policy and partly due to external economic factors such as the Asian and Russian financial crises and a fall in commodities markets. Nevertheless, by the end of October 2000, the Government reported that over 80% of businesses in the country were privately owned. The privatization program continues to be implemented by the Committee of State Property and Privatization of the Ministry of Finance. Today, the level of foreign direct investment is among the highest in the former Soviet Union.

Raw minerals extraction is by far the biggest sector of Kazakhstan’s economy, making it overly dependent on the world market prices for mineral resources. The main task facing Kazakhstan in the medium and long-term, therefore, lies in successful diversification of its economy. For purposes of developing the non-raw sectors of

the economy, Kazakhstan has established a number of investment support institutions, including the Development Bank of Kazakhstan, the National Innovation Fund, and the Investment Fund.

The major exports are natural resources including hydrocarbons and ferrous metals. The major imports include machinery, equipment and vehicles.

1.6 Foreign Relations

Since gaining independence in 1991, Kazakhstan has established diplomatic relations with over 110 countries. It is a member of the CIS (Commonwealth of Independent States), the United Nations, the International Monetary Fund, the World Bank, the European Bank for Reconstruction and Development, the Asian Development Bank, the International Finance Corporation, the Islamic Development Bank and several other international organizations. In January 1995, Kazakhstan signed a Partnership and Cooperation Agreement with the European Union, with a view to establishing closer economic and political ties with the European Union. The European Union and the United States have recognized Kazakhstan as a country with a market economy. Kazakhstan has acceded to many major international conventions and expects to become a member of the World Trade Organization.

Together with Russia, China, Kyrgyzstan, Tajikistan and Uzbekistan, Kazakhstan is a member of the Shanghai Cooperation Organization. Originally formed to deal with matters of border control, this organization now deals with combating terrorism, drug and weapon smuggling, and other issues.

Kazakhstan also actively encourages economic relationships with Russia and its neighboring countries in Central Asia. It is a member of the Eurasian Economic Community (EEC) – an international organization founded by Belarus, Kazakhstan, Kyrgyzstan, Russia and Tajikistan with the aim of furthering collaboration among community members, primarily in the fields of economics, finance, and social policy. Together with most other CIS countries, Kazakhstan is a member of a treaty providing for a free trade zone among these countries, and is also a signatory to a treaty with Russia, Belarus and Ukraine for the creation of a free economic space and harmonization of macroeconomic policies.

2. Foreign Investment in Kazakhstan

2.1 Investment Bodies

The principal state body overseeing investments in the Republic of Kazakhstan is the Committee on Investments within the Ministry of Industry and Trade. Among other things, the Committee on Investments is charged with negotiating and concluding investment contracts with investors pursuant to the *Law on Investments* (see Section 2.2 below). The conclusion of subsoil use contracts, however, is the responsibility of the Ministry of Energy and Mineral Resources (and, in certain cases, the local executive authorities).

An entity known as *Kazinvest* is responsible for promoting investment in Kazakhstan. Formerly known as the State Enterprise Kazakhstan Investment Promotion Center, *Kazinvest* is now a joint stock company 100% owned by the state.

2.2 Investment Law

In 2003 Kazakhstan adopted the *Law on Investments*⁵ which replaced the *Law on Foreign Investments* and the *Law on State Support for Direct Investments*. This law equalized the rights of foreign and domestic investors, while reducing or eliminating a number of the guarantees previously available to foreign investors. In particular, the *Law on Investments* eliminated guarantees against adverse changes in legislation (the so-called “grandfather” clause) and guarantees of international arbitration in the absence of an arbitration agreement. The *Law on Investments* retains the following investment guarantees: stability of contracts (with certain exceptions), free use of income, transparency of state investment policy, reimbursement of damages in the event of nationalization and requisition, and certain others.

⁵ The *Law On Investments*, dated 8 January 2003.

2.3 State Support for Direct Investment

The *Law on Investments* creates a system of benefits and preferences supporting direct investments in priority types of activity, the full list of which is approved by the Government⁶ (examples include certain types of production of equipment, agriculture and construction).

Local companies engaged in a designated priority activity may be eligible for benefits and preferential treatment and may receive, depending on the circumstances:

- an exemption from customs duties on imported equipment required for investment projects (the exemption can be granted for up to 5 years); and/or
- state grants in-kind (land plots, buildings, equipment, machinery, etc.)

To receive the investment benefits, a local company must sign an investment contract with the Committee on Investments. The investment contract should be registered by the Committee.

The investments preferences are not available to subsoil users.

Prior to 1 January 2009, the investment benefits also included a number of tax concessions, such as a corporate income tax exemption for up to 10 years (or, if certain tests were not met, accelerated straight-line tax depreciation for up to 10 years), as well as property tax and land tax exemptions for up to 5 years. With the adoption of the new Tax Code of Kazakhstan, these tax concessions were eliminated. Earlier contracts, however, will remain in effect through the end of their terms. The new Tax Code replaces the above tax preferences with an automatic right for local companies to accelerated straight-line tax depreciation of fixed assets which meet certain criteria. The taxpayer is not required to make any specific new investments in order to obtain this right, other than to acquire the assets.

⁶ Such list was approved by the Resolution of the Government of the Republic of Kazakhstan dated 8 May 2003 *On Certain Matters Pertaining to Implementation of the Law of the Republic of Kazakhstan On Investments*.

2.4 Bilateral Investment Treaties

Kazakhstan has concluded bilateral treaties on the encouragement and mutual protection of investments with 41 countries. Kazakhstan is also a party to a number of multilateral treaties concerning foreign investments (for example, the *Energy Charter*).

Investment treaties provide for a number of guarantees to nationals of member countries, including most-favored-nation treatment, protection against discrimination, requisition and nationalization and the right to resolution of investment disputes by international arbitration in the absence of an arbitration agreement.

Bilateral treaties on the promotion and mutual protection of investments exist with the following countries:

Table 1: Bilateral Investment Treaties

No.	Country	Signing Date	Effective Date
1	Armenia	6 November 2006	Not effective yet
2	Azerbaijan	16 September 1996	30 April 1998
3	Belgium-Luxembourg Economic Union	16 April 1998	6 February 2001
4	Bulgaria	15 September 1999	20 August 2001
5	China	10 August 1992	18 August 1994
6	Czech Republic	8 October 1996	2 April 1998
7	Egypt	14 February 1993	28 March 1997
8	Finland	9 January 2007	Not effective yet
9	France	3 February 1998	21 August 2000
10	Georgia	17 September 1996	24 April 1998
11	Germany	22 September 1992	29 January 1993
12	Greece	26 June 2002	Not effective yet
13	Hungary	7 December 1994	3 March 1996
14	India	9 December 1996	26 July 2001
15	Iran	16 January 1996	3 April 1999
16	Israel	27 December 1995	19 February 1997
17	Italy	22 September 1994	18 June 1996

No.	Country	Signing Date	Effective Date
18	Jordan	29 November 2006	Not effective yet
19	Republic of Korea	20 March 1996	26 December 1996
20	Kuwait	31 August 1997	1 May 2000
21	Kyrgyzstan	8 April 1997	28 October 1997
22	Latvia	8 October 2004	Not effective yet
23	Lithuania	15 September 1994	25 May 1995
24	Malaysia	27 May 1996	3 August 1997
25	Mongolia	2 December 1994	13 May 1995
26	Netherlands	27 November 2002	Not effective yet
27	Pakistan	8 December 2003	Not effective yet
28	Poland	21 September 1994	25 May 1995
29	Qatar	4 March 2008	Not effective yet
30	Romania	25 April 1996	5 April 1997
31	Russia	6 July 1998	11 February 2000
32	Slovakia	21 November 2007	Not effective yet
33	Spain	23 March 1994	22 June 1995
34	Sweden	25 October 2004	Not effective yet
35	Switzerland	12 May 1994	13 May 1998
36	Tajikistan	16 December 1999	17 October 2001
37	Turkey	1 May 1992	10 August 1995
38	Ukraine	17 September 1994	4 August 1995
39	United Kingdom	23 November 1995	9 January 1997
40	USA	19 May 1992	12 January 1994
41	Uzbekistan	2 June 1997	8 September 1997

2.5 Foreign Investment Restrictions

Certain industries are subject to foreign ownership restrictions whereby a foreign shareholder may not own more than a certain specified percentage in the company. For example, foreign companies may not own more than 20% of shares in local mass media companies and more than 49% in local telecommunication companies which operate long distance and trunk communication lines.

2.6 Code of Ethics for Foreign Investors

On 8 December 2000, President Nazarbayev approved a *Code of Ethics*, which all investors are required to follow. This *Code* is believed to be the first of its kind anywhere in the world. It was drafted by the Foreign Investors Council, chaired by the President of the Republic of Kazakhstan and it covers 13 subjects, including the following:

- observance of Kazakhstani legislation;
- prohibition of illegal or improper payments;
- observance of state policies and objectives (including protection of the environment), creation of employment opportunities, and the transfer of technology;
- abstention from illegal involvement in political activities;
- recognition of the importance of the country's import-substitution and export-oriented policies; and
- objectivity in public assessments of the country in the media.

3. Establishing a Legal Presence

In terms of legal presence in Kazakhstan, foreign investors may:

- establish a Kazakhstani legal entity that is either entirely foreign owned, or co-owned as a joint venture with a Kazakhstani partner(s); and/or
- establish a branch or a representative office.

3.1 Representative Offices and Branches of Foreign Legal Entities

3.1.1 Legal Form

Representative offices and branches of foreign legal entities may be established to represent the interests of foreign legal entities in Kazakhstan. A representative office is a division of a foreign legal entity and is not entitled to conduct business activities generating income in Kazakhstan. A branch is a division of a foreign legal entity, which

may fulfill all or part of the functions of its parent company, including activities generating income. Both representative offices and branches act on the basis of a “Regulation” (similar to a charter or by-laws), and are managed by an individual authorized by the parent company under a power of attorney.

Unlike a Kazakhstani legal entity, the legal form of a branch or a representative office does not provide the benefit of limited liability for the parent company with respect to obligations incurred by the branch or the representative office.

3.1.2 Registration

Representative offices and branches must be registered with the relevant regional department of the Ministry of Justice. The fee for state registration of a representative office or branch is KZT 8,275 (approximately US\$ 70 as of the date of this publication).

In order to register a branch or representative office, the parent company must submit the following documents to the registration authorities of the Ministry of Justice:

- an application to establish the branch or representative office;
- an extract from the trade register or certificate of registration certifying that the parent company is a validly existing legal entity under the legislation of its home country;
- a copy of the articles of association (or equivalent) of the parent entity;
- the resolution of the parent entity to establish the branch or representative office;
- the Regulation which will govern the operation of the branch or representative office;
- a power of attorney for the manager of the branch or representative office;
- the tax registration number of the manager of the branch or representative office;
- documents confirming the address of the branch or representative office; and
- confirmation of payment of the state registration fee.

Documents from the parent entity must be notarized and apostilled⁷ in the home country. Any document written in a language other than Kazakh or Russian must be accompanied by a notarized translation of the same into Kazakh and Russian.

Within ten business days after submission of all of the required documents, the appropriate registration body is required to issue a Registration Certificate, Statistical Card, and Tax Registration Certificate of the representative office or branch.

Once a newly established representative office or branch is registered, it must comply with certain post-registration formalities, including:

- registration for VAT (if necessary);
- obtaining a seal; and
- opening of bank accounts.

The overall process (including post-registration procedures) takes approximately three to four weeks from the date the documents are correctly submitted to the registration body.

3.2 Forming a Kazakhstani Legal Entity

Kazakhstani law recognizes, among others, the following types of legal entities:

- general partnerships;
- limited partnerships;
- limited liability partnerships;
- additional liability partnerships; and
- joint stock companies.

However, only limited liability partnerships and joint stock companies are common.

⁷ Apostilles can be appended only to documents originating from those countries, which are parties to the *Convention Abolishing the Requirement of Legalization for Foreign Public Documents* dated 5 October 1961. If the documents originate from countries which are not parties to this Convention, such documents should be legalized with the Embassy or Consulate Office of the Republic of Kazakhstan in the relevant country.

The principal laws regulating legal entities are the *Civil Code*, the *Law on Limited and Additional Liability Partnerships*,⁸ and the *Law on Joint Stock Companies*.⁹

The foundation documents of a Kazakhstani legal entity are the foundation agreement (where there is more than one founder) and the charter. In the foundation agreement, the parties (founders) undertake to create a legal entity, set out the scope of their joint activities and the objects of the legal entity, and define the terms and conditions for the transfer of their property, if any, to the ownership of the legal entity. The charter of a legal entity, among other things, must specify its name and address, the procedure for the formation and the competence of its managing bodies, reorganization provisions, and the procedure of its termination.

3.3 Limited Liability Partnerships

3.3.1 Legal Form and Number of Participants

The limited liability partnership (“LLP”) is the most frequently used business vehicle in Kazakhstan. An LLP is a partnership with limited liability, established by one or more persons or legal entities (the “participants”). The charter capital of an LLP is divided into participation interests as set out in the charter and foundation agreement. Participation interests are not securities and are not subject to securities market regulations. As a general rule, the participants in an LLP are not themselves directly liable for obligations and liabilities of the LLP, and bear the risk of losses associated with the activity of the LLP to the extent of the value of their contributions.

There are no limitations as to the maximum number of participants in an LLP. Likewise, an LLP can be established by one participant only. However, an LLP may not have as its sole participant another partnership consisting of one person or entity. A transfer of participation interest by an LLP’s participant to a third party is subject to the pre-emptive right (right of first refusal) of other participants to purchase the interest at the price offered by a third party.

⁸ The *Law On Limited and Additional Liability Partnerships*, dated 22 April 1998, as amended.

⁹ The *Law On Joint Stock Companies*, dated 13 May 2003, as amended.

3.3.2 Charter Capital

The charter capital consists of contributions of the founding participants.

The initial charter capital may not be less than an amount equal to 100 times the monthly calculation index (“MCI”)¹⁰ at the date when the foundation documents are submitted for state registration. Currently, this minimum amount is equivalent to approximately US\$ 1,000.

The participants in an LLP must contribute not less than 25% of the total amount of the charter capital by the time of its registration (but not less than the minimum amount of the charter capital required by the legislation). All participants must pay their contributions to the charter capital in full, within the period established by a resolution of the general meeting at which the establishment of the LLP was approved. This period may not exceed one year from the date of registration.

3.3.3 Management Structure

The general meeting of participants is the supreme body of an LLP. The general meeting has exclusive competence with regard to, among other things:

- amendments to the charter;
- increasing and decreasing the charter capital of the LLP;
- establishment of the executive body, supervisory council and/or audit commission and early termination of their powers;
- adoption of a resolution on transferring the LLP or its assets into trust management;
- approval of the annual financial reports and the distribution of profits;
- participation in other legal entities;
- reorganization or liquidation of the LLP, appointment of a liquidation commission and approval of liquidation balance sheets;

¹⁰ The MCI is an index used for the assessment of pensions, benefits and other social payments, as well as for fines and penalties, tax payments and other payments in accordance with current legislation. The MCI is 1,273 Tenge effective from 1 January 2009 pursuant to the Law *On the Republican Budget for 2009-2011*, dated 4 December 2008.

- approval of regulations on the LLP's internal activities;
- pledging of all of the LLP's assets;
- decisions on forced buy-outs of a participant's share; and
- additional contributions to the LLP's assets.

If there is only one participant, it exercises the functions of the general meeting.

The charter of the LLP can state that other areas will fall within the exclusive competence of the general meeting. Regardless of how the competence of the general meeting is defined in the charter, it may consider any matter relating to the LLP. Also, it may cancel any decision of lower corporate bodies on matters relating to internal activities of the LLP.

The LLP must have an executive body (collective or individual), responsible for managing the LLP's day-to-day business.

The LLP may also have a supervisory council to supervise and control the activities of the executive body.

3.3.4 Registration

The LLP must be registered with the relevant regional department of the Ministry of Justice. The fee for state registration of an LLP is KZT 8,275, payable at the date of submission of the required documents (approximately US\$ 70 as of the date of this publication).

In order to establish an LLP, the following documents must be submitted to the proper registration body of the Ministry of Justice:

- an application;
- the charter of the LLP;
- if the LLP has one founder, the resolution of the founder on the establishment of the LLP; if the LLP has multiple founders, the minutes of the meeting of founders on the establishment of the LLP;

- if the founder is a legal entity, a statement issued by the Kazakhstani tax authorities confirming that the founder does not have outstanding tax liabilities (for local founders) or is not registered in Kazakhstan as a taxpayer (for foreign founders);
- if one of the founders of the LLP is a foreign legal entity, an extract from the trade register, or any other document, certifying that the founder is a validly existing legal entity under the legislation of its home country (for local founders, notarized copies of its registration documents);
- if one of the founders is an individual, a notarized copy of his/her passport;
- the tax registration number of the head of the LLP (director, president etc.);
- documents confirming the address of the LLP; and
- a document confirming payment of the state registration fee.

Documents from a foreign legal entity must be notarized and apostilled in the home country. Any documents supplied in a language other than Kazakh or Russian must be accompanied by a notarized translation of the same into Kazakh and Russian.

Within ten business days after submission of all required documents, the appropriate registration body should issue a Registration Certificate, Statistical Card, and Tax Registration Certificate of the LLP.

Once a newly established LLP is registered, it must comply with certain post-registration formalities, including:

- registration for VAT (if necessary);
- registration of the charter capital contribution with the National Bank of Kazakhstan (if such contribution exceeds USD 300,000);
- obtaining a seal; and
- opening of bank accounts.

The overall process (including post-registration procedures) takes approximately three to four weeks from the date the documents are correctly submitted to the registration body.

3.4 Joint Stock Companies

3.4.1 Legal Form and Number of Participants

A joint stock company (“JSC”) is a legal entity which issues shares in order to raise capital for its activities. As a general rule, shareholders of a JSC are not liable for the obligations of the JSC and bear the risk of losses only to the value of the amount they have agreed to subscribe for their shares.

A JSC may have an unlimited number of shareholders. Shares in a JSC are freely transferable.

Since the shares in a JSC are regarded as “securities” for the purposes of Kazakhstani securities legislation, a JSC is subject to various additional requirements of the securities legislation. These apply upon the initial registration of the JSC and on an ongoing basis.

3.4.2 Formation of a Joint Stock Company

Founders of a JSC may include individuals and/or legal entities (both Kazakhstani and foreign).¹¹ The law permits an individual or legal entity to be the sole founder of a JSC.

The foundation documents of a JSC are its charter and the foundation agreement (if any). The foundation agreement terminates after the state registration of the issuance of the JSC’s shares.

3.4.3 Charter Capital

The minimum charter capital requirement for a JSC is 50,000 times the MCI (approximately US\$ 530,000 as of the date of this publication). The minimum charter capital must be paid in full within 30 days of the state registration of the JSC.

3.4.4 Shares and Other Types of Securities

A JSC may issue common and preference shares. The issuance of preference shares may not exceed 25% of the JSC’s authorized charter capital.

¹¹ In certain cases, the state (acting through the central or local governments, the National Bank, or various state entities) can act as a shareholder of a JSC.

A common share entitles the shareholder to participate in the general meeting of the shareholders and to receive dividends and a portion of the JSC's property in the event of its liquidation. Holders of preference shares have a priority right to receive dividends before the common shareholders at a predetermined guaranteed rate, and the right to a portion of the JSC's property remaining after liquidation. However, as a general rule, holders of preference shares cannot vote at general meetings of shareholders.

With certain limited exceptions, the founders of a JSC may issue a "golden share." The holder of a golden share does not participate in the formation of the charter capital or receive dividends. However, the holder of a golden share will have the right to veto resolutions on issues that are specified in the JSC's charter.

In order to attract additional capital, a JSC may issue bonds, warrants, options and other types of derivative securities.

3.4.5 Management Structure

The general meeting of shareholders is the supreme authority of a JSC. The JSC is required to hold a general meeting of shareholders annually, within five months of the end of each financial year.

The general meeting has exclusive competence with regard to, among other things:

- amendments to the charter;
- establishment of the board of directors of the JSC and early termination of its powers;
- increase in the number of authorized shares;
- approval of the annual financial reports of the JSC;
- reorganization or liquidation of the JSC, appointment of a liquidation commission and approval of liquidation balance sheets.

If there is only one shareholder, it exercises the functions of the general meeting.

The board of directors manages the JSC's operations except for those matters within the exclusive competence of the general meeting of shareholders.

The JSC's executive body manages the daily affairs of the JSC and can be constituted either by a board or by a single individual. The executive body implements the decisions of the general meeting of shareholders and the board of directors.

In order to monitor the financial and business activity of the executive body, the JSC may form an audit commission or elect an internal audit service which is accountable to the board of directors.

3.4.6 Registration

A JSC must be registered with the Ministry of Justice. The fee for state registration of a JSC is KZT 8,275, payable at the date of submission of the required documents (approximately US\$ 70 as of the date of this publication).

In order to register a JSC, the following documents must be submitted to the registration authorities of the Ministry of Justice:

- an application;
- the charter of the JSC;
- the minutes of the founders' meeting establishing the JSC;
- if the founder is a legal entity, a statement issued by the Kazakhstani tax authorities confirming that the founder does not have outstanding tax liabilities (for local founders) or is not registered in Kazakhstan as a taxpayer (for foreign founders);
- if one of the founders is a foreign legal entity, an extract from the trade register, or any other document, certifying that the founder is a validly existing legal entity under the legislation of its home country (for local founders, notarized copies of its registration documents will need to be submitted);
- if one of the founders is an individual, a notarized copy of his/her passport;
- the tax registration number of the head of the JSC (director, president etc.);
- documents confirming the address of the JSC; and
- a document confirming payment of the state registration fee.

Documents from a foreign legal entity must be notarized and apostilled in the home country. Any documents supplied in a language other than Kazakh or Russian must be accompanied by a notarized translation of the same into Kazakh or Russian.

Within ten business days after submission of all required documents, the appropriate registration body must issue a Registration Certificate, Statistical Card, and Tax Registration Certificate of the JSC.

Once a newly established JSC is registered, it must comply with certain post-registration formalities, including:

- registration for payment of VAT (if necessary);
- registration of the share issuance with the Agency for Regulation and Supervision of Financial Market and Financial Organizations;
- registration of the charter capital contribution with the National Bank of Kazakhstan (if such contribution exceeds USD 300,000);
- obtaining a seal; and
- opening of bank accounts.

The overall process (including post-registration procedures) takes approximately six to eight weeks from the date the documents are correctly submitted to the registration body.

3.5 Issue and Registration of Securities

3.5.1 Introduction

The securities market in Kazakhstan is regulated principally by the *Law on the Securities Market*¹² and the Law on Joint Stock Companies. The Agency of the Republic of Kazakhstan for Regulation and Supervision of Financial Market and Financial Organizations (the “Financial Supervision Agency”) is authorized by the state to regulate activities on the securities market.

¹² The Law *On the Securities Market*, dated 2 July 2003.

Under the legislation of Kazakhstan, the following constitute securities:

- shares and bonds;
- derivatives (as defined in legislation);
- securities of foreign issuers;
- mortgage certificates;
- warehouse certificates; and
- other types of securities.

3.5.2 Issue and Placement of Securities

Pursuant to the *Law on the Securities Market*, securities can be placed only after their issuance has been authorized (registered) by the Financial Supervision Agency. Shares can be placed either by subscription (with the price being determined by company's board of directors) or by conducting an auction.

3.5.3 Additional Share Issues

Under the *Law on Joint Stock Companies*, the state, acting through the tax office, may, with the court's consent, force a JSC with participation of the state to issue new shares to new shareholders, with the proceeds being utilized to repay taxes and other overdue payments to the state budget.

3.5.4 General Disclosure Requirements

The *Law on Joint Stock Companies* imposes specific reporting and disclosure requirements on JSCs. In particular, JSCs are required to disclose to their shareholders certain information, including information on issuance of shares, conclusion of major and interested-party transactions, and participation by a JSC in other legal entities.

In addition, JSCs are required to report to the Financial Supervision Agency bi-annually on the results of their share placements.

3.5.5 Special Disclosure Requirements

Anyone intending to acquire 30% or more of the shares in a JSC must notify the JSC and the Financial Supervision Agency. Such notification must contain information on the shares to be acquired, their price and certain other information relevant to the proposed transaction. Following the receipt of such a notice, the JSC has the right to outbid the proposed offer. If the JSC fails to exercise the aforementioned right and the purchaser continues with the acquisition, the purchaser must, within 30 days from the date of acquisition, publish an offer to the remaining shareholders to purchase their shares at a price not lower than the average market price of the JSC's shares. If the remaining shareholders agree to sell their shares, the purchaser has 30 days in which to pay.

3.6 Regulation of the Securities Market

3.6.1 Activities Requiring A Licence

Legal entities who have obtained a valid licence from the Financial Supervision Agency may conduct the following activities on the securities market:

- brokerage;
- dealing;
- custodial activities;
- portfolio management;
- keeping the register of securities holders;
- transfer agent activity; and
- pension fund management.

3.6.2 Stock Exchanges

There is only one licensed stock exchange in Kazakhstan. The Kazakhstan Stock Exchange has more than 100 companies listed on it. Most of the large local banks are listed, including Kazkommertsbank, BankTuranAlem and Halyk Savings Bank.

4. Licences

4.1 Introduction

Licensing issues are regulated by the *Law on Licensing*¹³. Under the *Law on Licensing*, certain business activities must be licensed. The law provides for a closed list of such activities.

Licences may be granted to (a) natural persons and legal entities of the Republic of Kazakhstan and (b) foreign citizens, natural persons without citizenship, foreign legal entities and international organizations.

A licence is granted to any entity that satisfies the requirements for that specific licence. With certain limited exceptions, foreign investors may obtain licences on the same conditions and in accordance with the same procedures as Kazakhstani nationals and legal entities.

Licences can be (i) general; (ii) one-time; and (iii) operational. General licences are issued for certain types of activities for an unlimited time period. One-time licences are issued for certain business operations within defined limits (e.g. such limits may be defined by time, volume, weight or quantity). Operational licences are issued for certain banking and insurance operations. Some licences are restricted to specific territories while others apply throughout the territory of Kazakhstan. A licensee may not transfer the licence to another party unless otherwise stipulated by law.

4.2 Licensing Agencies

The following state authorities have the general areas of responsibility as shown below (among others):

¹³ The *Law On Licensing*, dated 11 January 2007, as amended.

Table 2: Licensing Agencies

Licensing Authority	List of Licensed Activities
Agency for Information and Communications	Telecommunications services; Activities on authentication electronic key signature.
Agency for Regulation and Supervision of the Financial Market and Financial Organizations	Professional activity on the securities market and activity of stock exchanges; Banking activities; Insurance and re-insurance activities.
Committee for Atomic Energy of the Ministry of Energy and Mineral Resources	All types of activities related to use of atomic energy; Use of radio-active materials, source of radio-active rays; Design, production and sale of X-ray equipment; Design, production and sale of transportation and other packages for radio-active materials; Activities related to transportation of radio-active materials within the territory of the Republic of Kazakhstan; Activities related to use of radio-active wastes; Training of personnel pertaining to use of atomic energy; Activities on atomic energy testing areas or any other areas polluted as a result of atomic energy tests.

Licensing Authority	List of Licensed Activities
Committee for Transport Control of the Ministry of Transport and Communications	<p>Passenger transport by rail, river and sea;</p> <p>Transport of hazardous freight by vehicle, rail, river and sea.</p>
Ministry of Environmental Protection	<p>Environmental engineering and standardization;</p> <p>Ecologically hazardous activities;</p> <p>Ecological expertise activities;</p> <p>Ecological audit.</p>
Ministry of Energy and Mineral Resources	<p>Production, distribution and allocation of electric and heat energy, use of electric networks and electric substations;</p> <p>Planning and use of mining, petrochemical, chemical and oil and gas processing industrial facilities, use of facilities on storage of gas, oil and petrochemicals, use of the main gas pipelines, oil and petrochemicals pipelines;.</p> <p>Refining of raw minerals (except for commonly found minerals);</p> <p>Production and maintenance of measure equipment;</p> <p>Collection, storage, refining and sale by legal entities of iron and wastes of ferrous and non-ferrous metals;</p>

Licensing Authority	List of Licensed Activities
	<p>Manufacture, assembly and repair of chemical, drilling, geological exploration, oil, mining, energy, anti explosive electro-technical equipment, elevators and boilers working under pressure;</p> <p>Purchase of electric energy for the purpose of resale;</p> <p>Production and repair of gas supply systems for residential and municipal facilities.</p>
Ministry of Finance	Auditing.
Ministry of Justice	Expert forensic services.
Committee of Registration Service of Ministry of Justice	Appraisal of property.
Committee of Legal Aid and Legal Services to Population of Ministry of Justice	Advocacy and notary services.
Ministry of Education and Science	Educational activities.
Local Governments	<p>Foreign labor permits;</p> <p>Construction services;</p> <p>Expert engineering services.</p>
National Bank	<p>Certain banking activities (except for those that are licensed by the Agency for Regulation and Supervision of the Financial Market and Financial Organizations).</p>

4.3 Applying for a Licence

An applicant must submit all documents required by the relevant agency, and will also be required to pay an application fee. If the applicant meets all requirements, the licence should be issued within one month of the date of application.

4.4 Consequences of Operating Without an Appropriate Licence

Operating without a licence may entail administrative and criminal liability resulting in fines and forfeiture of revenues from the company's unlicensed activities. Operating without licence also gives an authority the formal ground to invalidate the transactions concluded during the violation period and to forcefully liquidate the company violating the licensing regulations.

5. Taxation

5.1 General

On 10 December 2008, Kazakhstan adopted a *Tax Code* ("Tax Code"),¹⁴ designed to replace the earlier Tax Code of 12 June 2001. The *Tax Code* came into force on 1 January 2009.

The President of Kazakhstan Mr. Nazarbayev initiated the adoption of the Tax Code in early 2008 with the stated objectives of promoting modernization and diversification of the Kazakhstan's economy and incentivizing business to "exit the shade".

In line with the above objectives, one of the primary objectives of the Tax Code is to reduce the overall tax burden on the non-extractive sectors, thus making them more attractive for potential investors. This reduction is compensated by subsoil users (i.e. mining and oil and gas companies), although their overall tax burden is still expected to be competitive with other jurisdictions. As a result of the enactment of the Tax Code, the tax burden for oil and gas companies is generally expected to rise from 49% to 62% while the burden for non-extractive sectors is expected to be reduced by 11%.

¹⁴ Code of the Republic of Kazakhstan *On Taxes and Other Mandatory Payments to the Budget (Tax Code)*, dated 10 December 2008.

5.2 Tax Registration

All Kazakhstani and foreign legal entities that carry out activities in Kazakhstan through a permanent establishment (“PE”) must register with the tax authorities (a PE includes a branch, representative office, office, place of management, provision of services in Kazakhstan for a certain period of time, as well as an agent with contract signing authority). In addition, the registration requirement applies in certain other circumstances (e.g. where a foreign company owns immovable property or opens a bank account in Kazakhstan).

5.3 Taxes

Taxes payable in Kazakhstan include corporate and individual income taxes; value added tax (“VAT”); excise tax; subsoil use taxes; social tax; land tax; property tax; vehicles tax; business registration fees; license fees for the conduct of certain businesses; and certain other fees.

5.4 Income Tax

5.4.1 Corporate Income Tax

The corporate income tax rate for tax residents is 20%¹⁵ of their worldwide income. The tax base is gross annual income after allowable deductions and adjustments. Deductions may be subject to specific limitations (e.g. there are certain restrictions on deducting interest and travel and entertainment expenses). Losses can generally be carried forward for tax purposes for up to 10 years.

A non-resident who has formed a PE in Kazakhstan is liable for 20% corporate income tax in relation to income which is attributable to the PE. In addition, the so called “branch profit tax” is payable at a rate of 15% of the difference between the aggregate income of the PE and the corporate income tax paid to the state budget. The profits tax of a branch is usually reduced to 5% under the double tax treaties.

¹⁵ The rate of corporate income tax will be reduced to 17.5% in 2010 and to 15% in 2011.

5.4.2 Withholding Tax

A non-resident which does not have a PE in Kazakhstan is generally subject to withholding tax on the Kazakhstani source income at the following rates:

Table 3: Income Tax Rates

Item	Rate
Capital gains, dividends and remuneration (interest)	15%
Insurance premiums payable under risk insurance agreements	15% ¹⁶
Insurance premiums payable under risk re-insurance agreements	5%
Transportation services in international traffic	5%
Service fees and other income	20% ¹⁷

The *Tax Code* provides for certain important tax benefits in relation to taxation of cross-border transactions.

First, withholding tax will not apply to dividends paid to foreign shareholders (participants) where: (i) the shares (interest) are owned for more than 3 years, and (ii) not more than 50% of the value of such shares (interest) or share capital is derived from the property of local mining or oil and gas companies.

Second, a non-resident without a PE in Kazakhstan is generally not taxed on the capital gain on a sale of shares (interest) in either local or offshore companies.

As an exception to the above rule, capital gains tax does apply to the sale of shares (interest) in a Kazakhstani mining or oil and gas company. In addition, the tax applies to the sale of shares (interest) in a company (either local or foreign) if 50% or more of the value of such company's share capital comprises property of local mining or oil and gas companies. The tax must be withheld by the foreign or local purchaser. The relevant double tax treaties may provide a relief from this tax.

¹⁶ This rate tax will be reduced to 10% in 2012.

¹⁷ This rate tax will be reduced to 17.5% in 2010 and to 15% in 2011.

5.4.2 Personal Income Tax

With certain limited exceptions, personal income of individuals is taxed at a flat rate of 10%. Residents pay income tax on their worldwide income (residents are generally defined as individuals who spend not less than 183 days in Kazakhstan during any 12-month consecutive period). Non-residents pay income tax on their income from Kazakhstani sources. Employers are required to withhold income tax and pension fund contributions (except for non-residents who do not permanently reside in Kazakhstan) from salary payments to employees, and transfer them to the budget (see Section 5.8 below).

5.5 Double Tax Treaties

Many categories of non-residents' income from Kazakhstani sources are exempt from both corporate and individual income taxes under double tax treaties to which Kazakhstan is a party. Some categories of income are taxable under the treaties at rates which are lower than those established by the *Tax Code*. Treaty benefits generally apply only where income from Kazakhstani sources is received by residents of countries with which Kazakhstan has double tax treaties, and where such income is not related to a Kazakhstani PE formed by such residents.

Kazakhstan has entered into bilateral treaties for the avoidance of double taxation with 40 countries to date. Below is a table listing these countries and indicating the reduced rates of income tax applicable under the treaties in relation to certain categories of income.¹⁸

¹⁸ Please note that the reduction of income tax rates under most treaties is allowable only upon satisfaction of certain conditions. For example, the income tax in relation to royalties under most treaties may be reduced only if the recipient is the beneficial owner of royalties. Therefore, the relevant treaty and circumstances at hand must be examined in each particular case in order to ascertain whether a certain category of income is subject to taxation at a reduced rate.

Table 4: Double Tax Treaties

No.	Country	Dividends ¹⁹ (%)	Interest (%)	Royalties (%)	Branch Profit Tax (%)
1.	Austria	5/10 15	10	10	5
2.	Azerbaijan	10	10	10	2
3.	Belarus	15	10	15	5
4.	Belgium	5/10 15	10	10	5
5.	Bulgaria	10	10	10	10
6.	Canada	5/10 15	10	10	5
7.	China	10	10	10	5
8.	Czech Republic	10	10	10	5
9.	Estonia	5/25 15	10	15	5
10.	France	5/10 15	10	15	5

¹⁹ Under certain treaties the rate of tax in relation to dividends may vary depending on the amount of the charter capital (voting stock, share, interest etc.) held by the recipient of dividends in the company paying them. For example, under the treaty with Belgium the rate of income tax on dividends should be 5% of the gross amount of dividends if the beneficial owner of the dividends holds directly or indirectly at least 10% of the charter capital of the company paying the dividends; in all other cases the dividends will be taxed at the rate of 15%. Therefore, the relevant treaty and circumstances at hand must be examined in each particular case in order to determine the applicable tax rate with respect to dividends. Following a forward slash in the table we indicate the minimum amount of the charter capital that must be owned by the recipient of dividends in order to use the reduced rate of tax indicated before the forward slash; after that we indicate the tax rate which is applicable if the recipient owns less than the mentioned minimum amount of the charter capital.

No.	Country	Dividends (%)	Interest (%)	Royalties (%)	Branch Profit Tax (%)
11.	Georgia	15	10	10	5
12.	Germany	5/25 15	10	10	5
13.	Hungary	5/25 15	10	10	5
14.	India	10	10	10	10
15.	Iran	5/20 15	10	10	5
16.	Italy	5/10 15	10	10	5
17.	Korea, Republic of	5/10 15	10	10	Not specified
18.	Kyrgyzstan	10	10	10	10
19.	Latvia	5/25 15	10	10	5
20.	Lithuania	5/25 15	10	10	5
21.	Malaysia ²⁰	10	10	10	10
22.	Moldova	10/25 15	10	10	5
23.	Mongolia	10	10	10	10
24.	Netherlands	5/10 15	10	10	5
25.	Norway	5/10 15	10	10	5
26.	Pakistan	12.5/10 15	12.5	15	Not specified

²⁰ This treaty is not yet in effect.

No.	Country	Dividends (%)	Interest (%)	Royalties (%)	Branch Profit Tax (%)
27.	Poland	10/20 15	10	10	10
28.	Romania	10	10	10	15
29.	Russia	10	10	10	10
30.	Singapore	5/25 10	10	10	5
31.	Slovakia	10/30 10	10	10	5
32.	Sweden	5/10 15	10	10	5
33.	Switzerland	5/10 15	10	10	5
34.	Tajikistan	10/30 15	10	10	10
35.	Turkey	10	10	10	10
36.	Turkmenistan	10	10	10	5
37.	Ukraine	5/25 15	10	10	5
38.	United Kingdom	5/10 15	10	10	5
39.	USA	5/10 15	10	10	5
40.	Uzbekistan	10	10	10	15

The application of double tax treaties in Kazakhstan ordinarily requires a submission by the foreign company to its Kazakhstani counterparty of a legalized (apostilled) certificate of its tax residency in the relevant treaty country.

5.6 Value Added Tax (VAT)

VAT is charged on the sale of most goods and services in Kazakhstan and on the importation of goods into the customs territory of Kazakhstan. The current rate of VAT is 12%. VAT is chargeable on turnovers that take place in Kazakhstan, based on the place of turnover rules.

The VAT on sale must be paid by Kazakhstani legal entities and by foreign companies that have a branch or a representative office in Kazakhstan, provided they are registered as VAT payers. The obligation to register is triggered when the turnover of the company in Kazakhstan exceeds approximately US\$ 318,000 during a calendar year. However, it is always possible to register as a VAT payer on a voluntary basis.

VAT on the importation of goods is payable by importers regardless of their VAT registration status. The rate of import VAT is 12% of the customs value of imported products, which is increased by the customs duties and excises. An export of goods is generally subject to zero rate VAT.

Under the *Tax Code*, VAT is not imposed, among other things, on the lease and sale of land and residential buildings (with limited exceptions), certain types of financial services, charter capital contributions, and the sale of shares (participatory interests). Interest payments under financial leases concluded in accordance with the legislation of Kazakhstan are also exempt from VAT.

Generally, an excess of input VAT over output VAT should be refunded to the VAT payer. Until 2011, most taxpayers will have to undergo a tax audit in order to obtain a refund. (From 2011, the tax audit will not be required for taxpayers whose VAT returns do not raise objections from the tax authorities.) From 2012, a tax audit will not be necessary for all taxpayers unless they fall within a risk zone pursuant to a risk management system maintained by the tax authorities. Other taxpayers will be entitled to an automatic refund.

5.7 Customs Duties

Generally, Kazakhstan imposes customs duties on the import of goods into Kazakhstan. The rates of the duties vary depending on the type of imported item and are usually charged on the custom value of the item. The importation of goods from certain countries (e.g. from Russia) is exempt from customs duties pursuant to certain international treaties that have been ratified by Kazakhstan, subject to compliance with the treaty conditions.

5.8 Withholding Obligation, Social Taxes and Charges

An employer must withhold personal income tax (see Section 5.5.2 above) and pension fund contributions (which are charged at the rate of 10% of salary, but do not apply to non-resident employees who do not permanently reside in Kazakhstan) from salaries payable to its employees. These payments are the cost of the employees.

An employer is required to pay a social tax for each of its employees (both local citizens and non-residents) on the salaries and other income payable to them. The social tax applies at a flat rate of 11%.

In addition to the social tax, employers must pay contributions to the Social Security Fund for each of their employees. These social security contributions must be paid by the employer at a rate of 4% of the income payable to employees. The amounts of social security contributions are deductible from the amounts of social tax.

Both the social tax and the social security contributions are at the employer's cost.

5.9 Subsoil Use Taxes

5.9.1 General

Prior to 1 January 2009, a subsoil user and the state could enter into either a concession-type subsoil use agreement or a production sharing agreement (“PSA”). The tax treatment of these agreements was different. With the adoption of the current *Tax Code*, it is no longer possible to enter into the PSA, and the concession agreement is the only type of subsoil use agreements that is available. However, earlier PSAs remain in effect.

Prior to signature, a subsoil use contract must be submitted to the tax authorities for review by its tax specialists.

5.9.2 Tax Stability of Subsoil Use Contracts

Before the *Tax Code* was enacted, all subsoil use contracts were stabilized for tax purposes. After enactment of the *Tax Code*, the following subsoil use agreements are stabilized for tax purposes: (a) PSAs which were entered into prior to 1 January 2009 and which underwent review by the tax authorities; and (b) contracts receiving approval of the President of Kazakhstan either in the past or in the future.

The *Tax Code* purportedly eliminated the tax stability of all other subsoil use agreements, including almost all concession agreements.

5.9.3 Specific Subsoil Use Taxes

Specific subsoil use taxes in Kazakhstan include the following:

(A) *Signature Bonus*

A signature bonus is a one-time payment to the state for the right to use the subsurface. The initial amounts of this tax are determined by the Government based on an estimation of the total volume of minerals and economic value of the deposit. The final amount of the signature bonus must be set out in the subsoil use contract.

(B) *Commercial Discovery Bonus*

A commercial discovery bonus is a fixed payment that is payable by subsurface users when a commercial discovery is made in the contract territory. The rate of commercial discovery bonus is 0.1% of the value of proven extractable reserves.

(C) *Minerals Extraction Tax*

For mining companies, the minerals extraction tax (“MET”) is payable on the average exchange price of extracted minerals (as quoted by specified publications). If there is no official exchange price for a mineral, it will be determined as the actual average sales price. The rates of MET for mining companies currently range from 0.25% to 22%²¹ depending on the type of mineral.

For oil and gas companies, the taxable base of the MET is the average world price of produced crude oil and gas condensate (as quoted by specified publications). The rates of MET for mining companies currently range from 5% to 18%²² depending on the amounts of oil produced. If oil is sold in Kazakhstan for specified purposes (e.g. to local refineries), the amount of the MET will be reduced by 50%.

²¹ These rates will range from 0.28% to 23% in 2010 and from 0.3% to 24% in 2011.

²² These rates will range from 6% to 19% in 2010 and from 7% to 20% in 2011.

(D) *Excess Profits Tax*

Excess profits tax is payable annually once the ratio of aggregate annual income of a subsoil user to cumulative deductions (for corporate income tax purposes) under a subsoil contract exceeds 1.25:1. The tax rates range according to a sliding scale from 0% to 60% of the net income of a subsoil user under each specific subsoil contract in excess of 25% of tax deductions (for corporate income tax purposes).

(E) *Rent Export Tax*

Rent export tax is payable by exporters of crude oil, gas condensate and coal, except for companies operating under PSAs. The rates of the rent export tax range from 7% to 32% of the world market price of exported oil (as quoted by specified publications).

5.10 Property and Land Taxes

Legal entities annually pay a property tax in Kazakhstan at the rate of 1.5% of average annual balance sheet value of real property (e.g. buildings) for business accounting purposes.

Owners of land pay a land tax in Kazakhstan on an annual basis. The rates of the land tax depend on the category of a particular land plot, its location and quality.

5.11 Special Economic Zone and Investment Preferences

5.11.1 Special Economic Zone

A special economic zone (“SEZ”)²³ may be established by a Decree of the President of Kazakhstan with the aim of accelerating the development of Kazakhstani regions and attracting investment and technology into those regions.

The SEZ regime generally provides for the tax benefits to companies operating in a SEZ the gross annual income of which consists of not less than 90% from certain

²³ There are currently six special economic zones in Kazakhstan.

types of activity, including the installation of computer software, the creation of information technologies, and the production of textile and knitted products.

These benefits are:

- exemption from the corporate income tax;
- exemption from land and property taxes; and
- exemption from customs duties and levies (except excise duties) for goods imported into the SEZ.

The list of goods and services which are eligible for the benefits of each specific SEZ is approved by the Government.

The following entities are not eligible for tax benefits of a SEZ: subsoil users; entities producing excisable goods; and certain others.

5.11.2 Investment Preferences

For a description of investment tax preferences, please refer to Section 2.3.

5.12 Small Business Preferences

Small business entities are defined as entities with income not exceeding approximately US\$ 308,000 over a calendar quarter and with an average number of employees not exceeding 50. If these criteria are met, the qualifying entities are entitled to pay corporate income tax and social tax at the rate of 3% of their income.

5.13 Transfer Pricing

On 5 July 2008, Kazakhstan adopted a transfer pricing law (“Transfer Pricing Law”),²⁴ which took effect on 1 January 2009. The *Transfer Pricing Law* superseded the country’s earlier transfer pricing law.²⁵

²⁴ The *Law On Transfer Pricing*, dated 5 July 2008.

²⁵ The *Law On State Control over the Use of Transfer Prices*, dated 5 January 2001.

This *Transfer Pricing Law* applies to international business transactions and to certain types of domestic transactions, regardless of whether or not the parties are related. If the tax or customs authorities determine that there is a deviation between the transaction price and the prevailing market price, they may adjust the transaction price accordingly and assess the amount of unpaid/underpaid taxes and impose fines and penalties.

The *Transfer Pricing Law* provides for the following methods of determining market price:

- comparable uncontrolled price method;
- costs plus method;
- resale price method;
- profit split; and
- transactional net margin.

Transactions in relation to certain goods (e.g. crude oil) are to be monitored on an ongoing basis by the state authorities for compliance with transfer pricing rules. Entities which are subject to monitoring must submit certain documents to the tax and customs authorities on a regular basis, including a justification of the prices charged, a functional analysis, financial reports, the transfer pricing methodology used, etc.

6. Currency Regulations

6.1 Introduction

Since the introduction of Kazakhstan's currency, the Tenge, in 1993, the National Bank of Kazakhstan (the "NBK") has pursued a tight monetary and fiscal policy. In April 1999 the Tenge depreciated by approximately 25%, after the announcement of the introduction of a freely floating foreign currency exchange rate, later stabilizing at a level of approximately 143 Tenge/US\$ 1 as of 10 July 2000. As of January 2004, the prevailing exchange rate was approximately 139 Tenge/US\$ 1, and as of 1 January 2008 it was approximately 120 Tenge/US\$ 1.

6.2 Foreign Exchange

In general, Kazakhstan's foreign currency regulations are not overly restrictive.

In line with the Government's program to liberalize Kazakhstan's currency regime, a new *Currency Law*²⁶ took effect in December 2005 and replaced the previous *Currency Regulation Law*.²⁷ The *Currency Law* is in greater compliance with IMF's currency regulations than its predecessor and its aim, inter alia, is the creation of conditions for further integration of Kazakhstan into the world economy. Under the *Currency Law*, a number of currency control requirements and restrictions were lifted starting from 1 January 2007. The *Currency Law* is the main piece of legislation governing foreign exchange transactions, and currency regulation is generally implemented by the NBK.

6.2.1 Residents

More stringent currency regulations apply to "residents" as opposed to "non-residents." One of the principal restrictions is that all payments between residents must be in Tenge (with certain limited exceptions). Among other things, residents:

- must deposit any receipts from foreign currency transactions in their accounts maintained at authorized banks and financial institutions in Kazakhstan; and
- may purchase foreign currency only in a limited number of cases, for example, if the purpose of the purchase is to make payment to nonresidents or to meet obligations with respect to loans received from the banks in foreign currency.

With certain limited exceptions, residents are required to notify the NBK of the following transactions:

- opening bank accounts outside Kazakhstan;
- acquisitions of less than 10% of shares or participatory interests in foreign companies if the purchase price exceeds US \$50,000; and

²⁶ The *Law On Currency Regulation and Currency Control*, dated 13 June 2005, as amended. The *Currency Law* took effect on 18 December 2005.

²⁷ The *Law On Currency Regulation*, dated 24 December 1996, as amended.

- acquisitions by non-residents of less than 10% of shares or participatory interests in local companies if the purchase price exceeds US \$300,000.

Also, residents must register with the NBK the following transactions (with certain limited exceptions) with non-residents provided that the payment by a non-resident exceeds US\$ 300,000 or the payment by a resident exceeds US \$50,000:

- a commercial credit for a period of more than 180 days;
- a loan for a term exceeding 180 days;
- payment for exclusive intellectual property rights and transfers of money and other property to perform obligations under a joint venture agreement; and
- acquisition of more than 10% of shares or participatory interest of legal entities.

6.2.2 Non-resident Legal Entities

For foreign currency purposes, non-residents include branches and representative offices of foreign entities, as well as all legal entities that do not fall under the definition of “residents.” Foreign exchange regulations are substantially less restrictive for these entities, and non-residents may make payments to its employees in foreign currency (see Section 7.13 below).

6.2.3 Individuals

The position of resident individuals is slightly more relaxed than for resident legal entities. However, individuals cannot, in particular, make payments for business-related transactions without establishing an account with an authorized local bank. Resident and non-resident individuals may purchase foreign currency on the domestic foreign currency market without limitation. Residents and non-residents exporting currency in excess of US\$ 10,000 (or the equivalent thereof) must present documents confirming the legal source of the money.

7. Employment

7.1 Introduction

The employment of nationals and foreign citizens in Kazakhstan is regulated by the *Labor Code*²⁸. Among other things, the Labor Code has increased the level of social protection of employees.

Under the *Labor Code*, labor relations are regulated by employment agreements and, if applicable, collective labor agreements. Employment contracts must be in writing and must conform to the minimum standards prescribed by the *Labor Code*.

7.2 Freedom to Employ

Generally speaking, foreign and domestic companies may hire employees directly, without the use of employment agencies. The *Law on Employment*,²⁹ however, requires that the local Employment Center be notified of plans to employ and dismiss staff. Local Employment Centers are territorial sub-divisions of the Ministry of Labor and Social Protection of the Population.

7.3 Employer's Obligations

An employer in Kazakhstan must comply with a number of obligations toward its employees, including the provision of a work place which complies with the regulatory requirement. In addition, the employer must insure its civil liability in the case of causing harm to employee's health during the performance of their labor duties.

7.4 Employment Term

Employment agreements may be concluded for a fixed term or indefinitely. Fixed-term agreements, however, may not be concluded for less than one year (except where the work is of a short-term nature or where it is necessary to substitute for temporarily absent employees). In the event of extension of a fixed term employment agreement, the extension is deemed to be concluded for an indefinite period.

²⁸ The Labor Code of the Republic of Kazakhstan ? 251-III dated 15 May 2007, as amended.

²⁹ The Law On Employment of the Population, dated 23 January 2001, as amended

An employment agreement may establish a probation period which may not exceed three months. 7 calendar days prior to the expiration of the probation period, the employment agreement may be terminated by sending a notification stating reasons for dismissal.

7.5 Dismissal

Kazakhstan does not follow the employment-at-will concept, and dismissal of an employee can be difficult, except for chief executive officers (the “CEOs”). The CEOs may be dismissed by a resolution of the owner of a company with compensation in the amount provided in the employment agreement. However, if a CEO resigns, he or she must submit a resignation note at least 2 months in advance.

Permissible grounds for dismissal of other employees include (among others): staff redundancy; inability to perform the duties required of the employee’s position; refusal to accept changes in the conditions of employment proposed by the employer; disclosure of confidential information relating to the employer; unjustified absence; intoxication; and theft. If the reason for dismissal is the liquidation of the employer or redundancy, then the employer must pay compensation to the employee in the amount of his or her average monthly wage.

7.6 Minimum Wage

Wages may not be lower than the minimum monthly wage. The current minimum monthly wage for 2009 is 13, 470 tenge (approximately US\$ 90).

7.7 Working Week

The regular working week is five days (40 hours). The aggregate amount of permitted monthly overtime is limited to a maximum of twelve hours, and overtime in normal working conditions on any given day is limited to a maximum of two hours. Overtime work must be compensated at a rate of at least 150% of the regular wage. Work at night, on non-working days and on official holidays must be compensated at a rate of 200% of the regular wage.

7.8 Holidays

There are eight official holidays in Kazakhstan. The minimum paid annual leave is 24 calendar days (excluding official holidays). Additional vacation days should be provided for (i) employees working in dangerous or hazardous conditions, and (ii) employees that are handicapped persons.

7.9 Sick Leave

Employees are compensated for temporary illness/disability in the amount of up to ten MCI (approximately US\$ 100) per month as sick leave compensation, to be paid by the employer.

7.10 Maternity Leave

Maternity leave for up to 126 (or in some cases 140) days is paid by the employer, based on the amount of the employee's average monthly salary.

7.11 Cost of Employment

Employers are required to pay social tax and social security contributions as described in Section 5.6 above.

7.12 Withholding Obligations

Employers are obliged to withhold individual income tax and pension fund contributions for their employees (see Section 5.6 above).

7.13 Compensation in Foreign Currency

A representative office or a branch of a foreign legal entity may pay salaries to its employees in foreign currency both in cash or through a foreign currency account opened at a Kazakhstani bank. While Kazakhstani legal entities may pay their foreign employees in foreign currency, local employees must be paid in local currency.

7.14 Foreign Workers in Kazakhstan

7.14.1 Policy

The use of foreign labor in Kazakhstan is regulated by the *Law on Employment* and by the *Rules of Hiring Foreign Labor Force*,³⁰ which are intended to implement Government policy aimed at promoting and maximizing the employment of Kazakhstani citizens. New *Rules of Hiring Foreign Labor Force*³¹ will become effective starting from 1 June 2008.

7.14.2 Work Permits

As a general rule, employers (including resident legal entities and branches and representative offices of foreign legal entities) engaging foreign employees in Kazakhstan must obtain a work permit for each foreign employee. A permit is not required for the heads of representative offices or branches of foreign legal entities; employees who are on business trips in Kazakhstan for a term not exceeding 60 days during one calendar year; employees who are seconded to the Kazakhstani company for a term more than 60 calendar days but not exceeding 180 calendar days subject to (i) secondment of Kazakhstani employees to the seconding foreign company (for the same period of time) or (ii) sending a Kazakhstani employee to educational institution located in the same foreign country where the foreign seconding company is located (for the same period of time); the heads of companies which have entered into contracts with the Government of Kazakhstan for a sum over US\$ 50 million or investment contracts in priority types of activity; and certain others. The employer is only required to submit a notification of a certain form to the local authorities about its employees exempted from obtaining a work permit.

³⁰ *Rules On Determining the Quota, Conditions and Procedure of Issuing to Employers of Permits to Attract Foreign Labor Force into the Republic of Kazakhstan*, as amended, approved by the Resolution of the Government of the Republic of Kazakhstan dated 19 June 2001, as amended.

³¹ *Rules On Determining the Quota, Conditions and Procedure of Issuing to Employers of Permits to Attract Foreign Labor Force into the Republic of Kazakhstan*, approved by the Resolution of the Government of the Republic of Kazakhstan dated 19 December 2007.

Steps to be taken by the employer before filing for a work permit include:

- informing the Employment Center that the employer has a vacancy;
- publishing a job advertisement for the position in the Russian and Kazakh languages in specified newspapers not later than one month and not earlier than three months before the date of filing for the permit;
- running a search for suitable Kazakhstani employees in the nationwide database; and
- within a month preceding the application date, obtaining certification from the Employment Center that suitable Kazakhstani candidates are not available.

Permits are divided into the following four categories: managers, highly educated specialists, highly qualified workers, and seasonal agricultural workers. Permits are issued to a particular person (as opposed to position) for a period of one year. To the heads of Kazakhstani legal entities, where foreign participation is not less than 50%, permits are issued for the term of the employment contract. The possibility of extending the permit's validity is limited by applicable legislation. Depending on the category of the permit, the employer may be required to train the Kazakhstani employees and/or create additional work places for Kazakhstani citizens.

In order to obtain a foreign work permit, the employer must submit the required documents to the local executive authorities. The process of issuing foreign work permits takes, on average, between one and two months. Based on the permits issued, an employer must draw up lists of foreign staff to be brought to Kazakhstan, and submit these to the relevant local executive authority, enclosing the following documents:

- a copy of the executed individual employment contract;
- notarized copies of relevant certificates of education;
- documents confirming work experience of each employee in the relevant capacity; and
- documents guaranteeing the departure of the foreign employee(s) from Kazakhstan upon expiration of the work permit(s).

We note that the recent amendments to the *Rules* the procedure for obtaining a permits for the heads of Kazakhstani legal entities, where foreign participation is not less than 50% was slightly simplified.

7.14.3 Foreign Labor Quotas

Under the *Law on Employment* and other labor legislation, the number of work permits available for foreigners is subject to a quota, first introduced in August 2000. The quota for 2009 is fixed at 0.75% to the economically active population of Kazakhstan, including (i) first and second category (managerial level of a company, specialists with higher and secondary professional education) - 0.35%; (ii) third category (qualified workers) - 0.35%; (iii) fourth category (workers, occupied at agricultural activities) - 0.05%.

8. Property Rights

8.1 Introduction

The *Constitution* of Kazakhstan provides that land may be privately owned. The *Land Code*³² is relatively favorable to foreign investors, permitting foreign individuals, foreign legal entities and legal entities with foreign participation to acquire certain interests in land.

8.2 Limitations on Land Ownership

Kazakhstani law recognizes the following categories of interests in land: right of ownership; right of permanent land use; right of temporary land use; easements; and other rights.

Essentially, only Kazakhstani citizens and legal entities may privately own plots of farmland. Foreign legal entities and foreign citizens may own land designated for industrial and residential use and may rent all other categories of land. Land plots designated for agricultural purposes may be granted to foreign citizens for use for a term not exceeding 10 years.

The *Land Code* prohibits private ownership to land designed for, among others, specially protected territories, forestry, and public use in inhabited localities.

³² The *Land Code of the Republic of Kazakhstan*, dated 20 June 2003.

Land use rights may be either permanent,³³ or temporary,³⁴ alienable or inalienable, subject to payment, or free of charge. In contrast to the Soviet system, as a general rule, a land user may now sell, mortgage, or otherwise dispose of its land use rights (with limitations related to rights to farmland) received from the state. However, in all cases, the title to land held under land use rights belongs to the state. A purchaser of land should always verify whether the seller is the owner or the user of the land.

Land use rights could be the subject for mortgage, could be encumbered in another way and could be used as a share in the authorized capital of the entity; however, it is not freely transferable and cannot be sold or otherwise disposed by the title holder without the consent of the state. In case of liquidation of the title holder, its legal successor will keep the title until the expiration of its validity term. The title holder shall pay (usually on a quarterly basis) the rent to the state budget on the basis of a land use agreement.

8.3 Land Transfers

Under the *Land Code*, the right to own buildings and structures is not separable from the underlying land on which they are located. As a general rule, the transfer of a building automatically entails the transfer of the land.

All land rights (including temporary rights to use the land for a period exceeding one year) must be registered with the registration authorities of the Ministry of Justice at the place where the relevant land plot is located, as defined under the *Law on State Registration of Rights to Immovable Property*.³⁵ A purchaser of land is advised to register its rights as soon as possible since the title and rights are deemed transferred only at the moment registration is completed; general term for such registration defined by the Law is equal to 6 months. Both parties have the right to register the transaction in Kazakhstan, and the party responsible for registration is usually defined by the agreement of the parties. If the responsible party fails to register the relevant right, then the courts may compel registration.

³³ Only state legal entities of the Republic of Kazakhstan can hold land by right of permanent use.

³⁴ Temporary land use rights may be short-term (up to five years) and long-term (from five to forty nine years).

³⁵ Law on State Registration of Rights to Immovable Property and Transaction dated 26 July 2007.

8.4 Buildings and Apartments

Foreign companies may own both non-residential and residential buildings and apartments. Pursuant to the *Foreigners Law*,³⁶ foreign citizens (except for those who reside only temporarily in Kazakhstan) may own non-residential and residential buildings or apartments in Kazakhstan. Any transactions with buildings or apartments (including temporary rights to use the buildings/apartments for a period exceeding one year) must be registered with the registration authorities of the Ministry of Justice, according to the same rules as indicated in clause 8.3.

All real estate rights and transactions (excluding rights to rent the real estate for a period less than one year) must be registered with the registration authorities of the Ministry of Justice, as defined under the *Law on State Registration of Rights to Immovable Property*.³⁷

9. Language Policy

9.1 General

Under the Constitution and the *Law on Languages*,³⁸ the state language is Kazakh. This is the official language of administration, legislation, court proceedings and recordkeeping. However, the Russian language may be used officially on an equal basis with Kazakh.

Written agreements executed between Kazakhstani parties must be in Kazakh and Russian. Written agreements between a Kazakhstani party and a foreign legal entity or a foreign individual must be in Kazakh and in a language chosen by the parties to the transaction. As an exception to the general rule, participants of the Regional Financial Center in Almaty have an option of entering into transactions either in Kazakh, Russian or English. In practice, Russian is the language of choice used for most contracts and Kazakh is not commonly used. The current Government policy, however, is to promote the use of Kazakh.

³⁶ The *Law On Legal Status of Foreigners*, dated 19 June 1995 as amended .

³⁷ *Law on State Registration of Rights to Immovable Property and the deals* dated 26 July 2007.

³⁸ The *Law On Languages in the Republic of Kazakhstan*, dated 11 July 1997, as amended.

Seals (stamps) of Kazakhstani legal entities must be in Kazakh and Russian. Letterheads, signage, announcements, advertisements, price-lists, price-tags and other visual information must be in Kazakh and Russian, and, where necessary, may be in other languages.

9.2 Labeling

Under Kazakhstani labeling requirements, it is prohibited to import and sell certain goods without certain minimum information (i.e. name of goods, country of origin, date of production, name of the applicable standard and etc) in both the Kazakh and Russian languages.

10. Civil Legislation

Kazakhstan is a civil law, not a common law, country. As such, the law is statute-based, not judge-made. The courts do not apply precedents, but interpret and apply the rules of the Constitution, laws, subsidiary legislation and international treaties. International treaties override domestic legislation (except for the Constitution) in the event of discrepancies. Laws are interpreted strictly. Where there is no relevant law governing a specific matter, the courts apply the provisions of analogous laws, and, in the absence of any analogous laws, apply the general principles and spirit of the law.

The *Civil Code*³⁹ is the foundation of civil legislation in Kazakhstan. The *Civil Code* (which consists of both a General Part and a Special Part), is the systemized and codified law that is used as the legal basis for regulating all types of property-related and personal non-property-related relationships between citizens, legal entities and the state.

The General Part of the *Civil Code* sets out the basis for the regulation of corporate entities, ownership rights, transactions, securities and obligations. It also guarantees the right to freedom of contract, and grants guarantees against arbitrary interference

³⁹ The Civil Code of the Republic of Kazakhstan (General Part), dated 27 December 1994, and the Civil Code of Republic of Kazakhstan (Special Part), dated 1 July 1999, as amended.

in private matters and freedom of entrepreneurial activity. Under the *Civil Code*, foreign investors enjoy the same rights and obligations as citizens and legal entities of Kazakhstan, unless otherwise provided by legislative acts.

The Special Part of the *Civil Code* contains provisions governing certain types of contracts; defining contractual relations for particular types of agreements such as agreements for sale and purchase, leases, loans, commission agreements, agency agreements, insurance agreements, intellectual property rights, inheritance as well as agreements on transportation and storage, etc. In addition, the Special Part regulates non-contractual damages and sets out conflict-of-laws rules.

In addition to the *Civil Code*, Kazakhstan has specific laws regulating different types of civil-law relations (e.g. the Financial Lease Law,⁴⁰ the Franchising Law⁴¹ and the Bankruptcy Law⁴²). However, in the event of any discrepancies between such laws and the *Civil Code*, the latter will prevail except for regulations in the areas of employment, subsoil use and environment.

With certain limited exceptions, the *Civil Code* permits a contract between a Kazakhstani company and its foreign counterparty to be governed by foreign law. Nonetheless, contracts between two Kazakhstani companies must be governed by Kazakhstani law.

⁴⁰ The Law On Finance Lease, dated 5 July 2000, as amended.

⁴¹ The Law On Complex Business License (Franchise), dated 24 June 2002

⁴² The Law On Bankruptcy, dated 21 January 1997, as amended

11. Banking and Insurance

11.1 Description of the Banking System

The banking industry in Kazakhstan is regulated by the *Law on Banks and Banking Activities*,⁴³ and the *Law on the National Bank*,⁴⁴ among other laws.

Kazakhstan has a two-tier banking system, with the National Bank of Kazakhstan (“NBK”) comprising the first tier and the remaining banks comprising the second.

The NBK is the central bank of Kazakhstan. It is an independent legal entity, capitalized at 20 billion Tenge, and reports to the President of the Republic of Kazakhstan. The President appoints the Chairman of the NBK with the consent of Parliament and the Deputy Chairmen upon the recommendation of the Chairman. The President approves annual reports, and has the right to demand any information relating to the NBK’s activity.

The principal task of the NBK is to control inflation. The NBK is empowered to develop and conduct credit and monetary policy, organize the functioning of payment systems, conduct currency regulation and currency control, and ensure the stability of the financial system.

Prior to the enactment of new legislation on 1 January 2004, supervision of the financial industry was exercised by the NBK. Now these functions are exercised by the Financial Supervision Agency, commonly known by the market as FMSA, which is entirely separate from the NBK and reports directly to the President.

Among other supervisory functions, the Financial Supervision Agency has the following responsibilities regarding banks in Kazakhstan: the issuance of permits for their formation, the issuance of licenses for their operation, the approval of prudent norms for their activities (e.g. credit limits and limits on certain types of transactions), and the inspection of their operations.

⁴³ The *Law On Banks and Banking Activities*, dated 31 August 1995, as amended.

⁴⁴ The *Law On the National Bank of the Republic of Kazakhstan*, dated 30 March 1995, as amended.

In its role as the country's central bank, the NBK continues to regulate the activities of banks to the extent that they involve currency matters or affect fiscal policy.

There are 35 second-tier banks registered in Kazakhstan including two state-owned banks - the Housing Construction Savings Bank of Kazakhstan and the Development Bank of Kazakhstan - as well as 14 banks with foreign participation (of which Citibank Kazakhstan, ABN AMRO Bank Kazakhstan, and HSBC Bank Kazakhstan are the largest). As of 1 January 2007, the gross equity of all second-tier banks reached 951.9 billion Tenge.

11.2 Licensing

All banking activities, including the acceptance of deposits, maintenance of correspondent accounts, cash operations, money transfers, discounting operations, and lending are subject to licensing by the Financial Supervision Agency.

11.3 Standards for Banks

The Financial Supervision Agency establishes standard requirements for banks, including a minimum capital requirement and supervises them on a consolidated basis. The minimum amount of share capital for newly established banks is 1.5 billion Tenge and must be gradually increased up to not less than 2 billion Tenge by 1 January 2010. For regional banks (i.e. those located outside Astana and Almaty) the minimum required share capital is not less than 500 million and it must be increased up to 1.5 billion Tenge by 1 January 2010. Equity capital of existing banks must not be less than 1 billion Tenge, and by 1 January 2010 it must be increased up to 2 billion Tenge and for regional banks (i.e. those located outside Astana and Almaty) not less than 500 million Tenge and by 1 January 2010 it must be increased by 1.5 billion Tenge. There are additional capital requirements for banks intending to open branches and telling centers.

Most of the principles elaborated by the Basel Committee on Banking Regulations and Supervision are being implemented by the Financial Supervision Agency through its various regulations and banks prepare their financial statements in accordance with the international accounting standards (IFRS).

The appointment of senior management is subject to approval by the Financial Supervision Agency and they and personnel of banks are also subject to certain compulsory standards.

11.4 Shareholding in banks

Any acquisition of 10% of the shares in a Kazakhstani bank requires prior approval by the Financial Supervision Agency. Foreign shareholders are subject to minimal rating requirements. Major shareholders of a financially weak bank may be required by the Financial Supervision Agency to take certain actions in order to improve the bank's financial position.

11.5 Deposit Insurance

At the end of 1999, the NBK introduced mandatory collective insurance of individual deposits by second-tier banks which meet certain qualifications of the NBK. The overwhelming majority of Kazakhstani banks participate in the collective insurance of deposits. Only certain types of individual savings deposits are covered by this insurance, however.

11.6 Liquidation and Reorganization of Banks

Banks may be liquidated or reorganized by court order or by a voluntary decision of the bank. However, banks may only be voluntarily reorganized or liquidated with the permission of the Financial Supervision Agency.

11.7 Non-banking Activity of Banks

Banks may carry out certain limited types of non-banking activities, some of which are subject to licensing by the Financial Supervision Agency.

11.8 Insurance

The insurance industry in Kazakhstan is regulated by the *Insurance Law*,⁴⁵ among others.

Property interests located in Kazakhstan and belonging to a legal entity or a natural person resident in the country may only be insured by a duly licensed resident insurer. The Financial Supervision Agency issues licenses for insurance activity and establishes minimum capital requirements and prudential standards for insurers, including solvency and financial stability standards.

⁴⁵ The Law *On Insurance Activities*, dated 18 December 2000, as amended.

Kazakhstani resident insurers may reinsure risks with non-resident re-insurers, either directly or through foreign brokers. The law restricts local insurers from re-insuring all of their risks abroad, by providing that the aggregate amount of insurance premiums which may be paid by resident insurers to non-resident re-insurers may not exceed 85% of the aggregate amount of insurance premiums received by that insurer in a given year.

Non-resident insurance companies may open representative offices without having to obtain approval from the Financial Supervision Agency. However, it is prohibited to establish branches of non-resident insurance companies in Kazakhstan.

Generally, resident and non-resident legal entities and individuals may act as founders of local insurance companies. However, entities registered in certain offshore countries determined by the Government, or their individual shareholders cannot be founders or shareholders of a local insurance company (this restriction does not apply to insurance companies with an international credit rating of “A” or better, as determined by certain qualified rating agencies).

Insurance broker activity is subject to licensing by the Financial Supervision Agency while the activity of insurance agents is not. Foreign companies may provide services to residents as insurance agents in relation to insurance and insurance brokers in relation to re-insurance, in all such cases, in their relations with foreign counterparties. Special conditions and rules are established by the law for those resident or nonresident individuals or non-resident legal entities owning (directly or indirectly) 10% or more of the voting shares of an insurance company.

12. Intellectual Property

12.1 Introduction

In 1992-1993, Kazakhstan began to implement a national system for registering and protecting intellectual property rights. Intellectual property rights in Kazakhstan include: all rights to industrial property (including inventions, industrial designs, utility models, company names, trademarks, service marks, appellations of origin of goods, etc), and copyright and related rights. Legislation on intellectual property includes the *Copyright Law*,⁴⁶ the *Trademark Law*,⁴⁷ the *Patent Law*⁴⁸, *Protection of Topologies of Integrated Circuits*⁴⁹, and the *Law on Selection Achievements*.⁵⁰

12.2 Committee for Intellectual Property Rights

The principal government agency involved in registration matters pertaining to copyrights, inventions, utility models, industrial designs, selection achievements, trademarks, service marks, and appellations of origin is the Committee for Intellectual Property Rights under the Ministry of Justice of the Republic of Kazakhstan (the “CIPR”).

12.3 International Conventions

Since 1993, Kazakhstan has been a party to the *Convention Establishing the World Intellectual Property Organization*; the *Paris Convention for the Protection of Industrial Property*; the *Madrid Agreement Concerning the International Registration of Trade Marks*; and the *Patent Cooperation Treaty*. On 18 July 1998 Kazakhstan ratified the *Eurasian Patent Convention*; on 10 November 1998 it became a member of the *Berne Convention*

⁴⁶ The *Law On Copyrights and Related Rights*, dated 10 June 1996, as amended.

⁴⁷ The *Law On Trademarks, Service Marks and Appellations of Origin of Goods*, dated 26 July 1999, as amended.

⁴⁸ The *Patent Law*, dated 16 July 1999, as amended.

⁴⁹ The *Law On the Legal Protection of Topologies of Integrated Circuits*, dated 29 June 2001, as amended.

⁵⁰ The *Law On the Protection of Selection Achievements*, dated 13 July 1999, as amended.

of Copyright Protection; and on 7 June 2000 it became a member of the *Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms*. In 2002 Kazakhstan acceded to the *Trademark Law Treaty*, the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, the *Locarno Agreement Establishing an International Classification for Industrial Designs*, and the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*. On 24 January 2003 the *Strasbourg Agreement Concerning the International Patent Classification* entered into force for Kazakhstan. On 12 November 2004 Kazakhstan became a party to the *WIPO Performances and Phonograms Treaty (WPPT)*.

12.4 Registration

Kazakhstan is a “first to file” and not a “first to use” jurisdiction, meaning it is important to register as soon as possible to protect industrial property rights, (such as: trademarks, inventions, utility models and designs) in Kazakhstan.

12.5 Inventions, Utility Models, Industrial Designs and Selection Achievements

Patent protection is given to an invention if it is new, involves an inventive step and is industrially applicable. An innovation patent for an invention is granted for three years. This term may be extended for an additional two years. A Patent for an invention is granted for twenty years. In certain cases Patents can be extended for a term not exceeding five years.

A utility model is granted patent protection if it is new and industrially applicable. The term of protection is five years, which may be extended for three years. A Patent for a utility model is granted for five years. This term may be extended for an additional three years.

Patent protection is granted to an industrial design if it is novel, original and industrially applicable. The term of a Patent for an industrial design is ten years and may be extended for a further five years.

A selection achievement is granted patent protection if it is new, distinct, uniform and stable.

Patents may be assigned and/or licensed by their owner(s) to natural persons or legal entities. However, to be valid, an assignment or license agreement must be registered with the CIPR.

Infringement of patents entails civil, criminal, and administrative liability.

12.6 Trademarks, Service Marks and Appellations of Origin of Goods

The right to a trademark or service mark is based on registration with the CIPR, and may also be protected without registration under applicable international treaties to which the Republic of Kazakhstan is a party. Trademark and service mark registration is granted for a term of ten years, renewable every ten years. Assignments or licenses for trademarks and service marks must be registered with the CIPR to be valid.

Legal protection is given to appellations of origin of goods based on registration with the CIPR. The registered owner may not grant licenses for the use of the appellation of origin of goods.

Violation of trademarks and appellations of origin rights entails civil, criminal, and administrative liability.

12.7 Copyrights and Related Rights

The *Copyright Law* protects works of science, literature and art (copyrights), as well as performances, phonograms, and TV and radio broadcasting or cablecast organizations (related rights). Copyright protection is granted to an author without registration or other formalities. Rights to use a copyrighted work may be assigned. The copyright is protected for the lifetime of the author plus 70 years.

12.8 Computer Programs and Databases

Computer programs and databases are protected under the *Copyright Law*. The production and distribution of infringing copies of computer programs, unlawful alteration of existing programs, and unlawful access to legally protected computer information may give rise to civil, criminal, and administrative liability.

13. Anti-Monopoly Regulation

13.1 General

Two separate state bodies are responsible for the supervision and control of competition matters in Kazakhstan, namely, the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies (the “Natural Monopolies Agency”) and the Agency of the Republic of Kazakhstan for Protection of Competition (the “Competition Agency”). The Natural Monopolies Agency regulates entities operating within certain enumerated industries which are considered “natural monopolies.” Such industries include:

- transportation of oil, oil derivatives via trunk pipelines;
- storing and transporting natural gas via trunk and/or distribution pipelines, operation of natural gas pipelines, usage of natural gas distribution systems;
- transportation and/or distribution of electrical energy;
- generation, transpiration, distribution and/or supply with heat energy;
- provision of electricity dispatch services;
- services relating to organizing of balancing generation and consumption of electrical energy;
- operation of main-line railways;
- provision of railway services under concession agreements;
- operation of branch railway lines;
- air navigation, airport and harbor services;
- provision of telecommunication services, if there is no other competing telecom operator due to technical impossibility, or economical unfeasibility, except for universal telecommunication services;
- leasing to other entities of duct banks and equipment for connecting telecommunication lines to terrestrial telecommunication network (of incumbent telecom operator);
- operation of water and sewage systems; and
- publicly available postal services.

The Natural Monopolies Agency maintains a registry of entities operating within such industries (such companies being referred to herein as the “natural monopolies”). Among other things, the Natural Monopolies Agency (and, in some cases, relevant branch regulators) approves the tariffs of natural monopolies. Any acquisition of more than 10% of the shares in a natural monopoly must be reported to the Natural Monopolies Agency. The acquisition of assets of a natural monopoly whose value exceeds certain established amounts, and the acquisition of any amount of shares in other entities by a natural monopoly, require the written approval of the Natural Monopolies Agency.

Unlike the Natural Monopolies Agency, the Competition Agency regulates competitive behavior of entities other than natural monopolies (although the jurisdiction of these agencies overlap to some extent). The Competition Agency maintains the register of entities having a dominant position in the market. Under the *Competition Law*,⁵¹ a legal entity is deemed to occupy a dominant position if its market share exceeds 35% of the relevant market. In certain cases, however, companies whose market share is below 35% can be officially declared by the Competition Agency as having a dominant position. In particular, each of three companies whose combined market share exceeds 50%, or each of four companies whose combined market share exceeds 70% of the market, can be declared as having a dominant position.

The Competition Agency is responsible for enforcing merger control regulations, and the following transactions may be carried out only after obtaining the written approval from the Competition Agency:

- (i) reorganization of a company by way of a merger or absorption;
- (ii) acquisition by a person or a company (or by a group) of 25% or more of the voting shares in a company;
- (iii) acquisition of more than 10% of main production assets or intangible assets of a company (based on the book value of the relevant assets);
- (iv) acquisition by a person or a company of rights allowing the acquirer to direct the business activities of another company or to perform the functions of its managerial body; and

⁵¹ The Law *On Competition*, dated 25 December 2008.

- (v) election or appointment of an individual to the boards of directors or management boards of two and more entities.

The transactions listed above require prior approval of the Competition Committee if one of the following conditions is met:

- the total value of the worldwide assets or the annual turnover of the companies involved is above 2,000,000 times the MCI (approximately US\$ 121,200,000); or
- one of the parties has a dominant position.

13.2 Protection from Unfair Competition

Under the Competition Law, the following activities constitute unfair competition:

- unauthorized use of trademarks and packaging;
- unauthorized use of the goods of another manufacturer;
- copying of an article's appearance;
- discrediting of a market player;
- flagrantly false, improper and unreliable advertising;
- realization of goods with compulsory assortment;
- appealing to boycott a seller (supplier);
- appealing to discriminate against a buyer (supplier);
- appealing to break contract with a competitor;
- bribery of a seller's (supplier's) employee;
- bribery of a buyer's employee;
- unauthorized use of information that is considered to be a trade secret.

13.3 Liability for Violation of Anti-Monopoly Legislation

Violations of anti-monopoly legislation (such as acts of unfair competition, failure to obtain approval of a merger when such approval is required, failure to obey the orders of the competition authorities, or monopolistic activity) may entail civil,

administrative, and criminal liability. Abuse of dominance is punishable by fines in the amount of up to 20% of income received from such activity, in addition, all income received from such activity for up to one year can be confiscated.

14. Product Liability

14.1 Product Liability

The *Civil Code* and the *Consumer Protection Law*⁵² govern product liability. Under the *Civil Code* and *Consumer Protection Law* the consumer has the right to freely enter into agreements to purchase goods and to use work and services; to quality and safety of goods (work, services); to full and reliable information on goods (work, services); to join public associations of consumers; and the right to reimbursement for damages caused by any defects.

Sellers and manufacturers may not, directly or indirectly, restrict any consumer protection rights guaranteed by law. Sellers and manufacturers are obliged to ensure that goods are of the required quality, and have a duty to inform the consumer of any possible defects. If a defect exists a consumer may demand one of the following: proportionate reduction of the purchase price; elimination of defects in the goods free of charge within a reasonable period; reimbursement of his own expenses for the elimination of the goods' defects; replacement of the improper quality goods for the goods conforming to the contract; refusal to execute the contract and refund of the price paid for the goods. A consumer may terminate the agreement and claim reimbursement of damages if a consumer has received unreliable or incomplete information concerning the product. The harm caused to a life, health or property of the citizen as a result of defects of the goods must be compensated in full.

⁵² The Law *On the Protection of Consumer Rights*, dated 5 June 1991, as amended.

14.2 Certification

Certain types of goods and equipment which are produced in or imported into Kazakhstan must comply with Kazakhstani standards of quality and must have a certificate of conformity to such standards. Testing and issuance of certificates of conformity are performed in Kazakhstan, except where Kazakhstan recognizes certificates of conformity issued abroad.

15. Oil and Gas

15.1 Oil and Gas

15.1.1 Introduction

Subsoil resources such as oil and gas are the exclusive property of the state. However, rights to use the subsoil may be granted to local and foreign individuals and legal entities on the basis of a subsoil use contract concluded with the Ministry of Energy and Mineral Resources following an investment tender.

15.1.2 Oil and Gas Legislation

The primary legislative acts regulating the oil and gas industry in Kazakhstan are the *Subsoil Law*⁵³ and the *Oil Law*⁵⁴. A number of other legislative acts regulate specific aspects of subsoil use.

The *Subsoil Law* sets out the basic framework for oil and mining operations in Kazakhstan, while the *Oil Law* addresses only oil operations.

Kazakhstan's legal regime governing the development of natural resources has evolved significantly over the years. Certain serious amendments were introduced to the *Subsoil Law* and the *Oil Law* in 1999, 2004, 2007 and 2008. Amendments adopted in 1999 eliminated the licensing requirement for subsoil use operations, giving contractors the right to engage in subsoil use operations by executing a subsoil use contract with the

⁵³ The Law *On the Subsoil and Subsoil Use* dated 27 January 1996, as amended.

⁵⁴ The Law *On Oil* dated 28 June 1995, as amended.

Competent Body of the Government, i.e. the Ministry of Energy and Mineral Resources. However, under these amendments, all previously issued subsoil licenses remain in effect until their expiry, including any periods of extension granted under legislation in effect at the time of their issuance.

The 2004 amendments to the *Subsoil Law* granted the state a pre-emptive right of acquisition in case of a direct or indirect transfer of a subsoil use right or shares in a subsoil user. The Government has not adopted any implementing procedures concerning the state's pre-emptive right. Therefore, it is not yet clear what procedures must be followed by the subsoil user in this respect. It is expected that these procedures will be regulated in more details in the new Subsoil Law.⁵⁵ The failure to comply with the pre-emptive right may result in the state's termination of the subsoil use contract.

As a result of the 2007 amendments to the *Subsoil Law*, the state has been granted a right to demand amendments to the terms and conditions of the contract, when the subsoil user's operations result in a substantial change in the economic interests and threat to the national security of the Republic of Kazakhstan. When the relevant amendments are not accepted, the Ministry of Energy and Mineral Resources may unilaterally terminate the contract. It should be noted, however, that these new 2007 provisions apply only to so-called "significant and strategic" oil fields. The specific implementing rules and/or the list of the "strategic" fields have not been adopted (approved).

Under amendments to the legislation adopted in 2008, production sharing agreements were eliminated. However, production sharing agreements which were executed prior to these legislative amendments will remain in force.

⁵⁵ We note that the wording of the *Subsoil Law* with respect to pre-emptive right refers to both new and "previously signed" subsoil contracts. This appears to violate certain provisions in Kazakhstan's legislation prohibiting retroactivity of new legislation. But, until the courts declare that such retroactivity is a violation of the law, the Government appears intent on applying the state pre-emptive right to subsoil contracts entered into before such right became effective.

15.1.3 Contracts

The Government annually approves a list of subsoil blocks to be put out to tender. Organizations wishing to participate in a tender must submit an application to the Ministry of Energy and Mineral Resources. Tenders can be open or closed.

The *Oil Law* provides for the following types of contracts:

- concession agreements;
- services contracts; and
- other types of contracts.

Exploration contracts are concluded for six years. This term may be extended twice for two-year periods if the contractor applies for an extension no later than three months prior to the contract's expiry.

Production contracts are concluded for 25 years. A contract for production at a deposit with recoverable reserves exceeding 100 million tons of crude oil and/or exceeding 100 billion cubic meters of natural gas may be concluded for up to 45 years. The effective period of a production agreement may be extended if the contractor applies for an extension no later than 12 months prior to the expiration of the effective period of the contract.

The specific terms of the contract are determined by an agreement between the parties in accordance with applicable laws. Every subsoil use contract must reflect the conditions of the *Model Subsoil Use Contract*,⁵⁶ although it is simply a framework which may be modified to meet the specific requirements of the transaction.

Before a contract is signed it must undergo, among other things, economic, tax, ecological, and legal expert examination and must be approved by the executive agencies responsible for sanitation, health and safety. The contract must also be registered with the Ministry of Energy and Mineral Resources and becomes effective from the date of registration, unless the parties agree that it will become effective at a later date.

⁵⁶ Resolution of the Government of the Republic of Kazakhstan *On the Approval of the Model Contract for Carrying out Subsoil Use Operations in the Republic of Kazakhstan* dated 31 July 2001, as amended.

15.1.4 Local Content Requirement

Kazakhstani legislation requires all oil and gas companies operating in Kazakhstan under licences and/or contracts to organize tenders for most goods, works, and services that they procure in the course of their oil and gas operations in Kazakhstan, and to give preference to local goods, work and services.

15.1.5 Exports of Oil and Gas

Despite Kazakhstan's substantial oil and gas reserves, the production and export of hydrocarbons has been constrained by Kazakhstan's landlocked position and its significant dependence on domestic and Russia's transportation infrastructure for export routes.

In general, in order to gain access to the main pipeline system, Kazakhstani oil producers have to reconcile shipment schedules with those of the national pipeline operator, Kaztransoil JSC. Due to the limited capacity of the Kazakhstani pipeline system, access to the pipeline is granted in proportion to a particular oil producer's share in regard to the total amount of oil to be produced in Kazakhstan in a given year.

There are currently three main operating export pipelines, two of which lead to the West through Russia and one to China.

As for the pipelines going through Russia, the Atyrau-Samara pipeline connects Kazakhstan to the Russian export network, while the Caspian Pipeline Consortium (CPC) pipeline connects the Tengiz field with the Russian port of Novorossiisk on the Black Sea. (This pipeline is largely privately owned.) Russia retains the right to suspend and impose restrictions on the flow of Kazakhstani oil from the Atyrau-Samara pipeline into Russia's transportation network, and Russian enterprises generally have priority access to Russian export terminals.

The new Kazakhstan-China pipeline became operational in the middle of 2006. It is 3,000 kilometers long and is expected to initially pump up to 10 million tons of oil per year (with potential expansion to 20 million tons per year at later stages of its operation).

An additional export route reportedly under consideration is a subsea, trans-Caspian pipeline connected to the Baku-Tbilisi-Ceyhan (BTC) pipeline. On 24 January 2007, "KazMunaiGaz," a Kazakh national company, signed a memorandum of understanding

on the establishment of the Kazakh Caspian oil transportation system, which will export oil from Kashagan and Tengiz fields across the Caspian Sea to Europe on the route Eskene-Kuryk-Baku-Tbilisi-Ceyhan pipeline.

Initially, the pipeline system is expected to transport 25 million tons of oil annually which will eventually be increased to 38 million tons. The commissioning of the project into operation is associated with oil production at the Kashagan oilfield which is expected to take off in 2010 and end in 2011.

15.2 Power

The energy sector is governed primarily by the *Law on Electricity*.⁵⁷ There are also a number of other legislative acts, presidential decrees, and government resolutions regulating the production, transportation, distribution and consumption of electrical and heat energy.

The energy industry is regulated by the Ministry of Energy and Mineral Resources. The Ministry's goal is to ensure compliance with Kazakhstan's energy policy and to implement the state's energy program. The Ministry is responsible for the licensing of relevant activities in the industry.

The state still maintains a relatively high level of control over the energy industry and, in particular, regulates the following areas:

- licensing in the power industry (such as production, transportation and distribution of electrical and heat energy);
- tariff regulation;
- de-monopolization and privatization of the industry;
- monitoring of the security, safety and effectiveness of production, transportation, distribution, and consumption of energy; and
- establishing mandatory rules related to the production, transportation, distribution, and consumption of energy.

⁵⁷ The *Law On Electricity*, dated 9 July 2004, as amended.

15.3 Telecommunications

The primary legislative act regulating the field of telecommunications is the *Communications Law*.⁵⁸ This Law is intended to liberalize the country's telecommunications sector and to create a more competitive environment for its operation.

Foreign individuals and foreign legal entities are prohibited from owning (directly or indirectly) more than 49% of long distance and/or international telecommunications service providers which, in turn, own terrestrial telecommunications lines (cable bus, optical cable, and radio-relay networks). Foreign individuals and foreign legal entities are also prohibited from managing and/or operating any trunk lines in Kazakhstan.

Any acquisition of more than 10% of a long distance and/or international telecommunications service provider which owns or operates communication lines is subject to approval by the Agency of the Republic of Kazakhstan for Informatization and Communications (the "Agency on Communications").

Under the *Law on Licensing*⁵⁹ and other applicable legislation, telecommunication services are subject to mandatory licensing. The Agency on Communications is the agency authorized to issue postal and telecommunications licenses. The Agency is required to keep a single national register of licenses issued in this sector.

15.4 Construction

Construction activities are heavily regulated in Kazakhstan and require a number of permits and approvals. The primary legislative act regulating the area of construction is the *Law on Construction*.⁶⁰

Most of stages related to the process of construction are subject to coordination and approval from authorized governmental bodies. The main stages are as follows:

- (i) approval and State expertise of construction design;
- (ii) obtaining of technical conditions for public utilities;

⁵⁸ The *Law On Communications*, dated 5 July 2004, as amended.

⁵⁹ The *Law On Licensing*, dated 11 January 2007, as amended.

⁶⁰ The *Law On Architecture, Town Planning and Construction Activity in the Republic of Kazakhstan*, dated 16 July 2001, as amended.

- (iii) obtaining of construction permit;
- (iv) State supervision during the process of construction; and
- (v) final State acceptance and registration;

Non-compliance with these requirements may result in administrative liability

Most types of construction activities are subject to mandatory licensing in Kazakhstan. *The Law on Licensing*⁶¹ provides for a detailed list of construction activities subject to licensing. Such activities range from the drafting of architectural plans and blueprints to the construction, repair, alteration, and modernization of buildings and installations.

To obtain such license, a company must comply with certain qualification requirements set forth in the *Construction Licensing Rules*.⁶²

Licenses are obtained from local executive bodies. An individual or company may apply for and obtain a license which covers one or a number of activities requiring licenses. The license may be issued for an unlimited term. A license may be suspended or revoked if a company holding a construction license breaches Kazakhstani law.

15.5 Maritime Industry

Although Kazakhstan is considered a land-locked country, it has a comprehensive legal framework for its maritime industry. This is due to the fact that Kazakhstan is one of the five littoral countries of the Caspian Sea, and has attracted significant amounts of foreign investment due to the enormous oil and gas reserves of this region.

The maritime industry in Kazakhstan is primarily governed by the *Shipping Law*.⁶³ The *Shipping Law* sets out certain specific requirements with which a foreign shipping company must comply in order to perform maritime transportation services in

⁶¹ The Law On Licensing dated 11 January 2007, as amended.

⁶² Rules of licensing of activity and qualification requirements in the sphere of architecture, town-construction and construction approved by the Decree of the Government of the Republic of Kazakhstan No 555 dated 30 June 2007.

⁶³ The Law On Commercial Shipping, dated 17 January 2002, as amended.

Kazakhstan. Firstly, a foreign company must register its legal presence in Kazakhstan. This requirement may be satisfied only upon the establishment of a local subsidiary; registration of a local branch (or a representative office) would not be sufficient.

Secondly, the foreign company must register its vessel(s) in Kazakhstan. Kazakhstan is a jurisdiction with a dual maritime registration system, which means that a vessel may be registered in Kazakhstan either “permanently” if it is transferred into the ownership of a local company, or “temporarily” if ownership of the vessel is retained by a foreign company and the vessel is chartered by a local company on a bareboat basis.

Finally, the shipping company is obliged to obtain all necessary government licenses and permits, including a transportation license issued by the Ministry of Transport and Communications.

Each vessel operated in Kazakhstan must have onboard certain documents (such as the classification certificate, certificate of seaworthiness etc) which are prescribed by Kazakhstani law and international treaties to which Kazakhstan is a party. Technical examination and classification of a vessel must be carried out by a classification society approved by the Government of Kazakhstan.

16. The Judicial System and Dispute Resolution

16.1 Judicial Reform

During the 1990s, Kazakhstan’s judicial system was extremely weak and ineffective. Courts, particularly at the local level, were not given sufficient resources by the state, and judges were poorly trained and underpaid. This resulted in many bad court decisions (particularly on complex commercial matters) and allegations of corruption.

The Government began a serious program of judicial reform in 2000 which is beginning to result in improvements to the country’s judicial system, including the formation of a Judicial Administration Committee under the Supreme Court, the establishment of judicial ethics commissions, increases in judicial salaries, the raising of minimum qualifications for judges, and the formation of specialized courts. While

many problems continue to exist, top officials in the Presidential Administration, the Supreme Court, and the Ministry of Justice appear dedicated to continuing the program of judicial reform during 2009, and, in particular, to increasing the independence of the courts, improving the qualifications of judges, and providing greater resources to local courts.

16.2 Court Structure

The basic provisions regulating the structure and activities of the judiciary are stated briefly in the Constitution and more extensively in the *Law on the Judicial System*.⁶⁴

The Kazakhstani court system consists of three levels: the Supreme Court of Kazakhstan; the local regional courts and courts with equivalent regional court status (e.g. the Almaty City court, Astana City Court); and the local city and district courts.

District (city) courts are courts of first instance for most cases and hear most cases, civil or criminal. Region level courts (and city courts that are equal to region level courts) function as courts of appeal for district court decisions. There is also the Supervisory Collegium in region level courts, which is the court of supervision appeal for decisions of district courts and courts of appeal already entered into force. They are also courts of first instance for certain types of cases, i.e., cases challenging the subsidiary regulations of ministries and other state agencies and/or actions of the regions' election committees.

The Supreme Court is the highest court in Kazakhstan. It acts as a court of appeal with regard to cases heard by the lower courts and as a court of original jurisdiction for certain categories of disputes. There are several bodies in the Supreme Court, including the Plenary Meeting of the Supreme Court, the Supervisory Collegium, and other collegia. The Plenary Meeting, among other things, issues binding interpretations of existing legislation. The Supervisory Collegium examines verdicts already entered into force.

⁶⁴ The Constitutional Law *On Judicial System and the Status of Judges in the Republic of Kazakhstan*, dated 25 December 2000.

As part of the program of judicial reform, certain specialized interdistrict courts having the status of local city and district courts have been established, including economic courts (which hear disputes in which the parties are legal entities and/or sole proprietors), administrative courts (which hear disputes related to challenging resolutions of state bodies levying administrative penalties), financial court in Almaty (which has jurisdiction in civil cases of participants of the Regional Financial Center in Almaty) and juvenile courts (which has jurisdiction in cases involving minors).

16.3 Judges

District, specialized interdistrict and Regional court judges are appointed by the President on the recommendation of the Supreme Judicial Council. Supreme Court judges are appointed by the Senate from the President's nominees selected on the recommendation of the Supreme Judicial Council.⁶⁵

The Supreme Judicial Council is an independent body which selects on a competitive basis candidates for the positions of Supreme Court judges and judges of the regional courts, and recommends them for appointment. The Supreme Judicial Council consists of the Chairman (appointed by the President), the Chairpersons of the Constitutional Council and the Supreme Court, the General Prosecutor, the Minister of Justice; deputies delegated by the Senate, judges, and other persons appointed by the President.

Judges are appointed to office permanently. The chairpersons of the district, regional and Supreme Court, as well as the chairperson of the collegiums of the region and the Supreme Court, are appointed to office for a five-year term.

⁶⁵ The status, procedure of formation and organization of the activity of the Supreme Judicial Council and the Qualification Collegium of Justice are determined by the Law *On Supreme Judicial Council*, dated 28 May 2001, and the Law *On Qualification Collegium of Justice*, dated 1 July 2001.

16.4 Dispute Resolution

16.4.1 Arbitration

The ability to settle disputes through binding arbitration, and particularly the ability to enforce arbitration awards in Kazakhstan's courts, has been the subject of much uncertainty and controversy in recent years. For example, the Constitutional Council of Kazakhstan ruled in 2002 that an arbitration award may be appealed in the courts, due to the constitutional right to judicial protection. This made enforcement of arbitration awards virtually impossible. The Council later annulled the disputed ruling of the Constitutional Council.

Nevertheless, despite that Kazakhstan is a party to the 1958 *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, only a handful of foreign arbitration awards have been enforced in the Kazakhstani courts. This was due, in part, to the lack of implementing legislation.

In December 2004, Kazakhstan adopted two new laws concerning arbitration: the *Arbitration Courts Law*⁶⁶ and the *International Commercial Arbitration Law*.⁶⁷ One of the objectives of the new legislation was to finally end the uncertainty and controversy concerning the right to arbitrate and/or enforce arbitration awards.

The *Arbitration Courts Law* applies to disputes between residents of Kazakhstan and permits such disputes to be resolved by "arbitration courts" in Kazakhstan. (Such "arbitration courts" are not state courts, but various private arbitration tribunals roughly analogous to private arbitration tribunals in Western countries). The law regulates every stage of the arbitration proceedings and provides for a mechanism of enforcing such awards in the state courts. However, the *Arbitration Courts Law* prohibits arbitration of disputes involving state interests and disputes involving state enterprises or natural monopolies. The *Arbitration Courts Law* specifically permits state courts to review an arbitration award on its merits only if the court determines the award is not in compliance with the principle of lawfulness or violates public policy.

⁶⁶ The Law *On Arbitration Courts*, dated 28 December 2004.

⁶⁷ The Law *On International Commercial Arbitration*, dated 28 December 2004.

The *International Commercial Arbitration Law* roughly mirrors the *UNCITRAL Model Law on International Commercial Arbitration*. It applies to disputes where at least one party is not a resident of Kazakhstan. For the purposes of this law, a wholly owned Kazakhstani subsidiary of a foreign legal entity is considered a local resident; therefore disputes between two Kazakhstani-registered subsidiaries of foreign companies may not be resolved by foreign arbitration.

The *International Commercial Arbitration Law* regulates arbitration proceedings inside Kazakhstan between covered parties and also contains implementing procedures for the enforcement in Kazakhstani courts of foreign arbitration awards. It permits state courts to review a foreign arbitration award on its merits if the court determines the award violates Kazakhstani public policy.

In addition to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, Kazakhstan is a party to the *European Convention on International Commercial Arbitration* (1961) and the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (1965).

It should be noted that certain disputes (e.g. land and tax disputes) are not arbitrable as a matter of Kazakhstani law and should therefore be resolved by Kazakhstani courts.

16.4.2 Mediation

There is neither legislative regulation available for mediation in Kazakhstan (apart from commercial arbitration), nor is there any significant practice of applying mediation in Kazakhstan. Furthermore, there is no statutory provision that prevents the documents received by the parties in the course of mediation from being subsequently used as evidence in the courts, or which protect a mediator from being subsequently called as a witness in court proceedings. However, the draft law *On Mediation* has been prepared already, and is expected from being adopted in 2009.

16.4.3 Enforcement of Foreign Court Judgments

Kazakhstani courts will enforce a foreign court judgment only if there is a treaty to that effect between Kazakhstan and the relevant foreign country. While Kazakhstan has entered into several bilateral and multilateral treaties to facilitate the enforcement of foreign court judgments,⁶⁸ none of those treaties are with Western European or

North American countries. Except for a treaty with other CIS countries, Kazakhstan is not a party to any multilateral treaties on the enforcement of foreign court judgments. Thus, Kazakhstani courts will refuse to enforce the judgments of most foreign courts.

17. Environment

17.1 Introduction

The environmental relations in the Republic of Kazakhstan are regulated by the *Environmental Code*⁶⁹. It is generally believed to be close to international standards of environmental regulation.

17.2 Regulatory Bodies

The Ministry of Environmental Protection of Republic of Kazakhstan (“MEP”) is the principal state authority in the sphere of environmental protection. Among other things, it issues environmental permits and licenses and establishes the limits for environmental emissions.

The tax authorities are responsible for collecting the payments for environmental contamination and emissions.

17.3 General Environmental Requirements

Individuals and legal entities which are involved in the use of the environment are subject to state environmental control. MEP carries out such control by organizing state environmental inspections.

Various aspects of business activities are subject to environmental requirements. By way of example, a positive state environmental expert evaluation must be obtained in relation to projects involving an environmental impact before such projects may

⁶⁸ The treaties on enforcement of court judgments were concluded with, among others, certain CIS countries, North Korea, Lithuania, Pakistan, China, Mongolia, and Turkey.

⁶⁹ Environmental Code of the Republic of Kazakhstan No. 212-III dated 9 January 2007.

begin. For example, enterprises engaged in environmentally hazardous business activities are subject to the mandatory requirement of obtaining environmental insurance covering potential damage as a result of environmental contamination.

For the violation of environmental requirements, legal entities and individuals may be subject to civil, administrative and criminal liability.

17.5 Environmental Authorizations

All individuals and legal entities, which produce air discharges, sewage and any solid consumption or industrial wastes, must obtain an environmental permit from MEP or its local subdivisions. Under the *Environmental Code*, there are two types of environmental permits:

- i) permit for environmental emissions, and
- ii) complex environmental permits.

Emissions permits are the most common of the two. They are issued for a specific term (3-5 years). Once a permit for environmental emissions expires, the environmental user will need to re-apply to the MEP for renewal.

In place of an emission permit, a complex environmental permit may be issued for an indefinite term to those environmental users that comply with the best available environmental technologies. A complex environmental permit is valid until the technologies applied or conditions of environmental use specified in the environmental permit change. The list of technologies eligible for the complex permit was approved by the Government on 12 March 2008⁷⁰.

In addition, separate environmental licenses will be required for individuals and legal entities involved in:

- environmental design;
- environmental expertise; and
- environmental audit.

⁷⁰ by Resolution No. 245 of the Government of Kazakhstan dated 12 March 2008.

The abovementioned permits are subject to certain qualification requirements set out by the legislation of Kazakhstan⁷¹ .

18. Procurement

18.1 State Procurement

Procurement of goods, works and services by Kazakhstani state agencies, state enterprises and private legal entities where the state owns at least 50% of shares (participatory interests) and their affiliates is subject to special regulation under the *State Procurement Law*⁷². By amendments to the *State Procurement Law* dated 20 November 2008 application of this law was expressly excluded with respect to national management holding companies, national holding companies, national management companies, national companies and their affiliates.

As a general rule, state procurement may be carried out only through a tender. The tenders are organized by a special commission formed by the purchaser. The tender process consists of a few stages (including publication of tender announcement and review of the bids) and is completed with the formation of a state procurement contract with the winner of the tender. When participating in the tender, Kazakhstani companies have priority over foreign companies.

Currently, the authorized body in the sphere of state procurement is the Committee on Financial Control of the Ministry of Finance. Among other functions, this Committee maintains a register of entities that must comply with state procurement rules.

⁷¹ Rues for Licensing of Activities For Works and Services in the Sphere of Environmental Protection approved by Resolution No. 457 of the Government of Kazakhstan dated 5 June 2007.

⁷² The Law *On State Procurement*, dated 21 July 2007.

18.2 Procurement in Subsoil Use Oil Operations

Similar restrictions in respect of the purchase of goods, works and services apply to companies which are engaged in oil and gas and mining activity. In particular, subsoil use companies must conduct a public tender in order to purchase goods, works and services necessary for their operations. In certain cases (e.g. where the goods and services are produced only by one supplier), the Procurement Rules⁷³ allow purchases to be made without a tender.

Companies which produce goods and services in Kazakhstan enjoy priority in the tender process over companies with production located abroad.

18.3 Procurement Rules Applicable to Natural Monopolies

The legislation provides special procurement rules for natural monopolies. According to the Natural Monopolies and Regulated Markets Law, natural monopolies must carry out open tenders when buying goods, works and services at expenses that are included in the prices (or maximum levels of prices) or tariff estimates for regulated services. Natural monopolies may use other methods of procurement of goods, services and works (e.g. purchase from one source) only if such possibility is directly provided by the law.

⁷³ The Rules *On Procurement of Goods, Works and Services in the Course of Subsoil Use Operations* approved by the Government Resolution dated 28 November 2007.

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