

Kazakhstan

BAKER & MCKENZIE

Doing Business in Kazakhstan



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PREFACE

Baker & McKenzie provides sophisticated legal advice and services to the world's most dynamic global enterprises, and has done so for more than 50 years.

With a network of more than 3,200 locally qualified, internationally experienced lawyers in 69 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 to 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, with an office in Baku and a project office in Tashkent.

Since gaining independence in 1991, Kazakhstan has adopted new legislation at a rapid pace. It remains a country in transition and its legal system 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 regulation of business activities in this country.

The information contained in this guide is current as of the date below. We will be happy 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 2005

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°C in summer.

1.2 Population

The population of Kazakhstan is approximately 15 million, 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 53% of the population is Kazakh, and approximately 30% 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 subsequently, between 1918 and 1920, fell under the control of the Bolsheviks. On 5 December 1936, Kazakhstan was made a constituent republic of the Soviet Union, and named the Kazakh Soviet Socialist Republic.

On 16 December 1991, Kazakhstan declared itself an independent sovereign state following the collapse of the Soviet Union on 8 December 1991.

1.4 Government and Political System

The President of Kazakhstan is Nursultan Nazarbayev, First Secretary of the Communist Party of Kazakhstan from 1989 to 1991.

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 seven years and may be re-elected for a second term. On 10 January 1999, President Nazarbayev was re-elected for a new seven-year term.

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

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

senators are elected from each of the individual oblasts² (regions), from the major cities, and from the capital. The President appoints seven senators. In accordance with the *Constitution*, as amended in October 1998, members of the Senate are elected for six-year terms, and members of the Mazhilis for five-year terms. The Mazhilis consists of 77 members, 67 of whom are elected from electoral districts based on current administrative and territorial units of the country. Ten members are elected based on political party lists by proportional representation within a single national constituency.

The Government is appointed by the President and is accountable to him. Kazakhstan currently has a Prime Minister and several deputy Prime Ministers. At the cabinet level, the Government is comprised of various ministries and 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 parties are *Otan* and *Asar*, with other parties including *Akzhol*, the Communist Party of Kazakhstan, and the Agrarian 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 embassies remain in Almaty. The city of Almaty, with a population of 1.2 million (the largest in Kazakhstan), remains the scientific, cultural, financial and industrial center of the country.

1.5 Economy

Kazakhstan is rich in natural resources, with vast reserves of oil and natural gas, major coal deposits, and precious and base metals.⁴ In addition, Kazakhstan has considerable agricultural potential in both grain and livestock production. Development of these natural resources has been hampered by the fact that Kazakhstan is a landlocked country, and potential export routes are vulnerable to political and economic instability in neighboring countries. Nevertheless, the abundance of natural resources has attracted considerable interest among international investors.

Major reforms initiated since 1992 have, among other achievements, 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

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.

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

⁴ Natural resources include iron, gold, chromium, cobalt, copper, nickel, aluminum, molybdenum, lead, beryllium, tantalum, silver, phosphorous, zinc, manganese, barite, cadmium, arsenic, industrial diamonds and semi-precious gemstones, bauxite and uranium.

controls, encouraged foreign investment, strengthened the independence of the National Bank of the Republic of Kazakhstan (the “NBK”), 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 transition period. This situation has since improved with real GDP rising steadily since the end of 1999, showing growth for January-September 2004 currently up 9.1% on the same period in 2003.

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 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.

1.6 Foreign Relations

Since gaining independence in 1991, Kazakhstan has established diplomatic relations with over 100 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 over a ten-year period. 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, among 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 the Kyrgyz Republic, Uzbekistan and Tajikistan, 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 trade zone and harmonization of macroeconomic policies.

2. FOREIGN INVESTMENT IN KAZAKHSTAN

2.1 Investment Bodies

The Committee on Investments within the Ministry of Industry and Trade is the principal state body overseeing investments within the Republic of Kazakhstan. 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 subsurface use contracts, however, is the responsibility of the Ministry of Energy and Mineral Resources.

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. *Kazinvest* maintains an office in Almaty to assist potential investors.

2.2 Foreign 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 guarantees against adverse changes in legislation (the so-called “grandfather” clause), and guarantees to the right of international arbitration in the absence of an arbitration agreement. The *Law on Investments* retains the following investment guarantees: stability of contracts, free use of income, transparency of state investment policy, reimbursement of damages in the event of nationalization and requisition, and certain others.

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 Government.⁶

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

- Tax preferences, which may be in the form of exemption from land tax and property tax in relation to assets used in an investment project, full exemption from corporate income tax (in the event of creation of new facilities), or accelerated depreciation of fixed assets (in the event of expansion and renovation of existing facilities);⁷
- Exemption from customs duties on imported equipment required for investment projects (the term of such exemption is one year and can be extended for a maximum of five years); and/or
- State grants in-kind (land plots, buildings, equipment, machinery *etc.*).

To receive benefits and preferences an investor must sign a contract with the Committee on Investments.

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

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.”

⁷ The maximum term for which tax preferences may be granted is five years. However, the Government has the right to extend the maximum term to ten years, depending on the types of activity and the volume of investment.

2.4 Bilateral Investment Treaties

Kazakhstan has concluded and ratified bilateral treaties on the encouragement and mutual protection of investments with 32 countries, and is a party to 35 double taxation treaties. Kazakhstan is also a party to a number of multilateral treaties concerning foreign investments.

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.	Azerbaijan	16 September 1996	30 April 1998
2.	Belgium-Luxembourg Economic Union	16 April 1998	6 February 2001
3.	Bulgaria	15 September 1999	20 August 2001
4.	China	10 August 1992	18 August 1994
5.	Czech Republic	8 October 1996	2 April 1998
6.	Egypt	14 February 1993	28 March 1997
7.	Finland	29 September 1992	15 February 1998
8.	France	3 February 1998	21 August 2000
9.	Georgia	17 September 1996	24 April 1998
10.	Germany	22 September 1992	29 January 1993
11.	Hungary	7 December 1994	3 March 1996
12.	India	9 December 1996	26 July 2001
13.	Iran	16 January 1996	3 April 1999
14.	Israel	27 December 1995	19 February 1997
15.	Italy	22 September 1994	18 June 1996
16.	Kuwait	31 August 1997	1 May 2000
17.	Kyrgyzstan	8 April 1997	28 October 1997
18.	Lithuania	15 September 1994	25 May 1995
19.	Malaysia	27 May 1996	3 August 1997
20.	Mongolia	2 December 1994	13 May 1995
21.	Poland	21 September 1994	25 May 1995
22.	Republic of Korea	20 March 1996	26 December 1996
23.	Romania	25 April 1996	5 April 1997
24.	Russia	6 July 1998	11 February 2000
25.	Spain	23 March 1994	22 June 1995
26.	Switzerland	12 May 1994	13 May 1998
27.	Tajikistan	16 December 1999	17 October 2001
28.	Turkey	1 May 1992	10 August 1995
29.	Ukraine	17 September 1994	4 August 1995
30.	United Kingdom	23 November 1995	9 January 1997
31.	USA	19 May 1992	12 January 1994
32.	Uzbekistan	2 June 1997	8 September 1997

Full information on double taxation treaties currently in force is given in Section 5.4, below.

2.5 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 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

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 are not Kazakhstani legal entities, but 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 business 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.

3.1.2 Registration

Representative offices and branches must be registered with the registration bodies of the Ministry of Justice. The fee for state registration of a representative office or branch is equivalent to twenty times the monthly calculation index⁸ ("MCI") at the date of submission of the required documents (approximately US\$ 150 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:

⁸ 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 971 Tenge effective from 1 January 2005 pursuant to the *Law On the Republican Budget for 2005*, dated 2 December 2004.

- An application to establish the branch or representative office;
- An extract from the trade register or certificate of registration certifying that the parent 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 Kazakhstani tax registration number of the manager of the branch or representative office;
- Confirmation of 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 apostilled⁹ 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 or 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 payment of 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.

⁹ 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 that are not parties to this Convention, such documents should be legalized with the Embassy or the Consulate Office of the Republic of Kazakhstan in the relevant country.

The principal laws regulating legal entities are the *Civil Code of the Republic of Kazakhstan*,¹⁰ the *Law on Limited and Additional Liability Partnerships*,¹¹ and the *Law on Joint Stock Companies*.¹²

In Kazakhstan, a legal entity operates on the basis of its charter (if there is only one participant or shareholder), or the foundation agreement and the charter (if there are two or more participants or shareholders). 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. A LLP is a partnership with limited liability, established by one or more persons or legal entities (the “participants”). The charter capital of the LLP is divided into participation interests as set out in the foundation documents. The participants in a LLP are not liable for obligations 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 a LLP. Likewise, a LLP can be established by one participant. However, a LLP may not have as its sole participant another business partnership consisting of one person.

3.3.2 Rights of Participants

The participants in a LLP have the following rights:

- To participate in management in accordance with the LLP’s charter, and the law;
- To obtain information concerning the business of the LLP;
- To receive income from the business of the LLP;
- Following liquidation of the LLP, to receive the value of any assets remaining after settling all creditors’ claims; and
- To terminate their participation in the LLP by disposing of their participating interests.

The participants in a LLP may have additional rights provided by legislation and the entity’s foundation documents.

3.3.3 Obligations of Participants

The participants are obligated to:

- Comply with the requirements of the foundation agreement;
- Make contributions to the charter capital as specified in the foundation agreement; and
- Not disclose any confidential information relating to the LLP.

¹⁰ The *Civil Code of the Republic of Kazakhstan (General Part)*, dated 27 December 1994, as amended.

¹¹ The *Law On Limited and Additional Liability Partnerships*, dated 22 April 1998, as amended.

¹² The *Law On Joint Stock Companies*, dated 13 May 2003, as amended.

The participants may have additional obligations imposed by legislation (depending on the relevant business), and the foundation documents.

3.3.4 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 MCI at the date when the foundation documents are submitted for state registration. Currently, this minimum amount is equivalent to approximately US\$ 750.

The participants in a 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 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.

3.3.5 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;
- Establishment of the executive body, supervisory board 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 report and the distribution of profits;
- Participation in other business partnerships or non-profit organizations;
- Reorganization or liquidation of the LLP, appointment of a liquidation commission, and approval of liquidation balance sheets;
- 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.

The charter of the LLP can provide for other areas within the exclusive competence of the general meeting.

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 board to control the activities of the executive body. If the LLP's charter does not stipulate the election of an audit commission (internal auditor), the supervisory board of the LLP is also responsible for monitoring the financial and business activities of the executive body.

3.3.6 Registration

The LLP must be registered with the registration bodies of the Ministry of Justice. Information including the name, address, charter capital, names of the founders and members of the executive bodies of the partnership must be recorded in the State Register of Legal Entities.

The fee for state registration of a LLP is equivalent to twenty times the MCI at the date of submission of the documents for state registration (currently equivalent to approximately US\$ 150).

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

- An application;
- The charter of the partnership;
- If the LLP is founded by one founder, the resolution of the founder on the establishment of the LLP;
- If the founder is a legal entity (either foreign or local), it must submit a statement issued by the Kazakhstani tax authorities confirming that the founder does not have outstanding tax liabilities;
- If one of the founders of the LLP is a foreign legal entity, it must submit 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;
- If one of the founders is a foreign citizen, he/she must submit a photocopy of his/her passport or other document confirming his/her identity;
- The Kazakhstani tax registration number of the head of the LLP (director, president *etc.*);
- Confirmation of 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 or Russian.

Within ten business days after submission of all required documents, the appropriate registration body is obliged to 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 payment of 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.

3.4 Joint Stock Companies

3.4.1 Legal Form and Number of Participants

A JSC is a legal entity which issues shares in order to raise capital for its activities. Shareholders of a JSC are not liable for the obligations of the JSC, and bear the risk of losses only to the extent of the amount the shareholders have agreed to subscribe for their shares.

A JSC may have an unlimited number of shareholders. If a JSC meets the following two tests, it will be a “public” JSC: firstly, it has “own capital” of at least 1,000,000 times the

MCI (currently equivalent to approximately US\$ 7,500,000), and secondly, it has at least 500 shareholders. Generally, shares of a public JSC can be transferred only on the Kazakhstan Stock Exchange.¹³

3.4.2 Formation of a Joint Stock Company

Founders of a JSC may include individuals and/or legal entities (both Kazakhstani and foreign).¹⁴ 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 or, in the case of a solely owned JSC, the charter and sole shareholder's decision.

3.4.3 Charter Capital

The minimum charter capital requirement for a JSC is 50,000 times the MCI (US\$ 375,000). 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.

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.

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. The holder of a golden share only has the right to veto resolutions on issues 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 management of a JSC comprises the following bodies:

- A supreme body - the general meeting of shareholders;
- A management body - the board of directors;
- An executive body - the management board or general manager;
- A controlling body - the audit commission or internal auditor; and
- Other bodies in accordance with applicable legislation.

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.

¹³ Exceptions include cases of initial subscription/placement; placement of shares within the initial authorized share capital; and the JSC's re-purchase and subsequent placement of its earlier issued shares.

¹⁴ 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.

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;
- Approval of the annual financial reports of the JSC;
- Approval of transactions increasing the JSC's liabilities by more than 25% of its own capital; and
- Reorganization or liquidation of the JSC, appointment of a liquidation commission and approval of liquidation balance sheets.

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 either a board or 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 auditor from among the shareholders, or appoint professional auditors (accountants) for this purpose.

3.4.6 Registration

A JSC must be registered with the registration bodies of the Ministry of Justice. Information, including the name, address, charter capital, names of the founders and members of the executive bodies of the JSC, is recorded in the state register of legal entities.

The fee for state registration of a JSC is equivalent to 20 times the MCI at the date of submission of the documents for state registration (currently, approximately US\$ 150).

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;
- The minutes of the founders' meeting;
- If the founder is a legal entity, either foreign or local, it must submit a statement issued by Kazakhstani tax authorities confirming that the founder does not have outstanding tax liabilities;
- If one of the shareholders is a foreign legal entity, it must submit 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;
- If one of the shareholders is a foreign citizen, he/she must submit a photocopy of his/her passport or other document confirming his/her identity;
- The Kazakhstani tax registration number of the head of the JSC (director, president *etc.*);
- Confirmation of the address of the JSC; and
- Confirmation of 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 is obliged to 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;
- Obtaining a seal; and
- Opening of bank accounts.

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

3.5 Issuance and Registration of Securities

3.5.1 Introduction

The securities market in Kazakhstan is regulated principally by the *Law on the Securities Market*¹⁵ 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.

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.¹⁶

3.5.2 Issue and Placement of Securities

Pursuant to the *Law on Joint Stock Companies*, shares 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 to issue new shares to new shareholders, the proceeds of which 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 publish all information relating to payment of dividends and/or placement, conversion, or, in some cases, sale or re-purchase of shares.

¹⁵ The *Law On the Securities Market*, dated 2 July 2003.

¹⁶ Documents may be recognized as securities only by the legislation of Kazakhstan.

In addition, JSCs are required to publish their financial reports annually, and to report to the Financial Supervision Agency semi-annually on the results of their share placements. Some stricter reporting requirements apply to public JSCs, such as the requirement to provide the Financial Supervision Agency with the following information within five working days:

- Information on all shareholder and/or board decisions, together with information on their implementation;
- Information on all of the company's major transactions and/or interested parties' transactions;
- Information on all loans extended to the company exceeding 10% of the company's own capital;
- Information on all licenses received, suspended, or revoked by the company;
- Information concerning any attachments over the company's assets;
- Information concerning any force-majeure or other circumstances resulting in the company's property being destroyed (where the balance sheet value of such destroyed property accounts for 10% or more of the total value of the company's assets); and
- Information on all cases where the company and/or its officials have been subject to administrative liability.

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 any 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 Licensing

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

- Brokerage;
- Dealing;
- Depository functions;
- Custodial activities;
- Portfolio management;
- Securities Registration;
- Pension fund management; and
- Other types of activity specified by the Financial Supervision Agency.

3.6.2 Stock Exchanges

There is only one licensed stock exchange in Kazakhstan, the Kazakhstan Stock Exchange, with 80 companies listed correctly. Among them are Kazakhtelecom, and most large local banks, including Kazkommertsbank, Bank TuranAlem and Halyk Savings Bank.

Further to the *Agreement on the General Principles of Establishing a Securities Market* between Kazakhstan, Uzbekistan, Kyrgyzstan and Tajikistan signed in 1998, shares of Kyrgyz companies listed on the Kyrgyz Stock Exchange can be traded on the Kazakhstan Stock Exchange.

4. LICENSES

4.1 Introduction

A number of activities are subject to the procurement of licenses and permits. Licenses may be granted to citizens and legal entities of Kazakhstan, as well as to foreign legal entities, foreign citizens, stateless persons and international organizations.

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

Licenses can be permanent or temporary. Some licenses are restricted to specific territories while others apply throughout the territory of Kazakhstan. A licensee may not transfer the license to another party unless otherwise stipulated by law.

4.2 Licensing Agencies

The following state agencies have the general areas of responsibility as shown below:

Table 2: Licensing Agencies

Licensing Authority	List of Licensed Activities
Agency for Information Technology and Communications	Mail services and telecommunications, operation of nationwide trunk and international communication lines Radio communication
Agency of the Republic of Kazakhstan for Regulation and Supervision of the Financial Market and Financial Organizations	Professional activity on the securities market and activity of stock exchanges Banking activities Pension funds activities Insurance and re-insurance activities
Committee for Atomic Energy of the Ministry of Energy and Mineral Resources	Installation, design and construction, operation and liquidation of various atomic-energy-using facilities; other nuclear-use-related activities
Committee for Civil Aviation of the Ministry of Transport and Communications	Servicing aircraft, passengers and cargo transportation; servicing airports

Licensing Authority	List of Licensed Activities
Committee for Transport Control of the Ministry of Transport and Communications	Passenger and freight transport by rail, river and sea; international passenger and freight transport by road; conveyance of hazardous freight by all forms of transport
Ministry of Environmental Protection	Ecologically hazardous activities
Ministry of Education	Educational activities
Ministry of Energy and Mineral Resources	<p>Generation, distribution and sale of electric and heat energy</p> <p>Planning and operation of industrial facilities involving explosives, flammable substances and mining operations; oil and gas trunk pipelines; hoisting installations and pressurized boilers, vessels and pipelines</p> <p>Manufacture, assembly and repair of chemical equipment and equipment for drilling, oil and gas, geological exploration, and mining; explosion-proof electrotechnical equipment, devices and control systems; emergency protection and alarms; hoisting devices, and pressurized boilers, vessels and pipelines</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> <p>Refining of Raw materials</p> <p>Production of oil products</p>
Ministry of Finance	Auditing (except banking and insurance audits)
Ministry of Justice	Expert Forensic services Providing advocacy, notary and other paid-for legal services
Ministry of Labor and Public Social Protection	Foreign labor permits
National Bank	Conduct of foreign currency transactions

4.3 Applying for a License

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 license should be issued within one month of the date of application.

4.4 Consequences of Operating Without an Appropriate License

Penalties for operating without a license can be severe, and can subject an individual or entity to administrative and criminal liability. All income received from unlicensed activity is subject to confiscation by state bodies.

5. TAXATION

Taxes in Kazakhstan are governed by the *Tax Code*,¹⁷ letters of the Ministry of Finance, and tax treaties. Taxpayers can be subject to severe penalties for non-payment of taxes.

5.1 Tax Registration

All Kazakhstani and foreign legal entities that carry out activities in Kazakhstan must register with the tax authorities.

5.2 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.

5.3 Income Tax

The corporate income tax rate for tax residents is 30% of their worldwide income. The tax base is gross annual income after allowable deductions. Deductions may be subject to specific limitations (*e.g.* there are certain restrictions on deducting interest and travel and entertainment expenses).

A non-resident who has formed a permanent establishment (“PE”) in Kazakhstan is liable for 30% corporate income tax in relation to income 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 budget.

Aggregate income of a non-resident which is not related to a PE is taxed (without deductions) at the following rates:

Table 3: Income Tax Rates

Item	Rates
Dividends and remuneration (interest)	15%
Insurance premiums payable under risk insurance agreements	10%
Insurance premiums payable under risk re-insurance agreements	5%
Transportation services	5%
Other income	20%

Personal income of individuals is taxed at progressive rates ranging from 5% to 20%. Residents pay income tax on their worldwide income. Non-residents pay income tax on their income from Kazakhstani sources. Employers are required to withhold income tax and pension fund contributions on salary payments to employees, and transfer them to the budget (see Section 5.6 below). Failure to do so may result in fines and penalties.

¹⁷ The Code of the Republic of Kazakhstan On Taxes and Other Obligatory Payments to the Budget (the Tax Code), dated 12 June 2001.

5.4 Double Taxation Treaties

Many categories of non-residents' income from Kazakhstani sources are exempt from both corporate and individual income taxes under double taxation 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*. These benefits apply only where income from Kazakhstani sources is derived by residents of countries with which Kazakhstan has double taxation treaties, and if 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 35 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

Table 4: Double Taxation Treaties

No.	Country	Dividends ¹⁹ (%)	Interest (%)	Royalties (%)	Net Income (%)
1.	Azerbaijan	10	10	10	2
2.	Belarus	15	10	15	5
3.	Belgium	5/1015	10	10	5
4.	Bulgaria	10	10	10	10
5.	Canada	5/1015	10	10	5
6.	China	10	10	10	5
7.	Czech Republic	10	10	10	5
8.	Estonia	5/2515	10	15	5
9.	France	5/1015	10	15	5
10.	Georgia	15	10	10	5
11.	Germany	5/2515	10	10	5
12.	Hungary	5/2515	10	10	5
13.	India	10	10	10	10
14.	Iran	5/2015	10	10	5
15.	Italy	55/1015	10	10	5
16.	Korea	5/1015	10	10	
17.	Kyrgyzstan	10	10	10	10

¹⁸ Please note that the reduction of income tax rates under most treaties is allowable only upon satisfaction of certain conditions. For example, income tax in relation to royalties under the treaty with Hungary 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.

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. In the second column (Dividends), the second figure shown indicates 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.

No.	Country	Dividends ¹⁹ (%)	Interest (%)	Royalties (%)	Net Income (%)
18.	Latvia	5/2515	10	10	5
19.	Lithuania	5/2515	10	10	5
20.	Moldova	10/2515	10	10	5
21.	Mongolia	10	10	10	10
22.	Netherlands	5/1015	10	10	5
23.	Pakistan	12.5/1015	12.5	15	
24.	Poland	10/2015	10	10	10
25.	Romania	10	10	10	15
26.	Russia	10	10	10	10
27.	Sweden	5/1015	10	10	5
28.	Switzerland	5/1015	10	10	5
29.	Tajikistan	10/3015	10	10	10
30.	Turkey	10	10	10	10
31.	Turkmenistan	10	10	10	5
32.	Ukraine	5/2515	10	10	5
33.	United Kingdom	5/1015	10	10	5
34.	USA	5/1015	10	10	5
35.	Uzbekistan	10	10	10	15

5.5 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 15%. VAT is chargeable on those turnovers that take place in Kazakhstan, based on the place of turnover rules.

Under the *Tax Code*, VAT is not imposed on the lease and sale of land and residential buildings, financial services, geological exploration and prospecting operations, charter capital contributions, importation of certain types of medicines and medical equipment, or the sale of assets by way of privatization or as a property complex. The remuneration portion of lease payments under financial leases concluded in accordance with the legislation of Kazakhstan is also exempt from VAT.

5.6 Social Taxes and Charges

An employer is required to pay social tax for each of its employees, at regressive rates ranging from 20% to 7% of the aggregate income payable to the employee. The rate of social tax with regard to foreign administrative, management, and engineering employees having a work permit (see Section 7.13.2 below) varies from 11% to 5% of the employee's income. Where there is no work permit, the social tax will be charged at the standard rates, ranging from 20% to 7%.

A new obligatory contribution to the Social Security Fund was introduced from 1 January 2005.²⁰ This social security contribution must be withheld by the employer at a rate of 1.5% of the income payable to its employees. The amounts of social security contributions are deductible from the amounts of social tax.

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

5.7 Subsurface Use Taxes

A subsurface user and the state may conclude either a concession-type subsoil use agreement or a production sharing agreement (PSA). A concession-type agreement

²⁰ The *Law On Mandatory Social Insurance*, dated 25 April 2003.

will require payment of all taxes and duties including royalty, excise on crude oil, a signature bonus, a mining bonus, an excess profits tax, and an export rent tax.

Tax treatment of PSAs is different in that it will not require the payment of the following taxes:

- Export rent tax;
- Royalty;
- Excise on crude oil;
- Excess profits tax;
- Land tax; and
- Property tax.

Prior to signature, a subsurface use contract must be submitted to the competent authority for review by its tax specialists.

Concession-type contracts for subsoil use signed after 1 January 2004 are not stabilized for tax purposes. However, the tax regime for contracts (both concession-types and PSAs) concluded prior to 1 January 2004 will remain stable. PSAs signed after 1 January 2004 will be stabilized for tax purposes.

5.8 Special Economic Zone

A special economic zone (the “SEZ”)²¹ 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 following tax benefits to companies operating in a SEZ whose gross annual income consists of not less than 90% from services related to the installation of computer software and the creation of information technologies:

- A 50% reduction of the corporate income tax;
- Exemption from VAT for the sale of services relating to the installation of computer software and the creation of information technologies;
- 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 services which will be eligible for these benefits has not yet been approved by the Government. It should be noted that the *Tax Code* provides for specific taxation of companies operating at the “Seaport Aktau” SEZ, compared to the general tax treatment of other SEZs.

5.9 High-Added-Value Preferences

In furtherance of Kazakhstan’s policy of promoting industrial development and reducing dependence on exports of natural resources, corporate income tax preferences are available, from 1 January 2005, for organizations selling goods with high added value. Such an organization must meet the following criteria in order to be eligible for these:

- Income from sales of goods of a type deemed eligible for corporate income tax preferences accounts for at least 90% of the organization’s total income

²¹ There are currently three special economic zones in Kazakhstan.

from the realization of goods, work, and services. The Government has not yet adopted a list of such eligible goods, as at the date of publication;

- The share of added value is at least 40% of the total sale price. Such share comprising: payments to employees; depreciation amounts calculated in accordance with legislation on accounting; the sum of taxes paid during a given tax period (excluding VAT, excise taxes and withholding taxes paid by the organization); and net income (loss);
- The coefficient of the tax burden is at least 12%. This coefficient is determined as the ratio of taxes calculated for the tax period (excluding VAT, excise taxes, and withholding taxes paid by the organization) to the total income of an organization from realization of goods, work, and services.

If an organization meets all three tests, it will be entitled to reduce its corporate income tax by 30% in relation to the goods of its own production. If the produced goods are certified in accordance with ISO 9000 and ISO 14000, the corporate income tax may be reduced by 50%.

The following organizations are not eligible for these corporate income tax preferences: subsoil users; entities producing excisable goods; entities engaged in the petrochemical industry; and entities operating in special economic zones.

5.10 Transfer Pricing

On 5 January 2001, Kazakhstan adopted the *Transfer Pricing Law*.²² This Law authorizes the tax service to monitor specified types of transactions between certain persons. If the tax service determines that there is a deviation between the transaction price and the prevailing market price, it may adjust the transaction price accordingly and assess the amount of unpaid/underpaid taxes and impose fines and penalties.

Transactions subject to monitoring include (among others):

- Transactions between related parties;
- Barter transactions;
- Transactions with an entity that is entitled to preferential tax treatment; and
- Transactions with an entity that has reported losses for the preceding two tax periods.

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

- Comparable uncontrolled price method;
- Costs plus method; and
- Resale price method.

5.11 Accounting

Kazakhstani legislation requires every legal entity (including representative offices and branches of foreign legal entities) to maintain accounts according to Kazakhstani accounting standards established under the *Law on Accounting*.²³ The accounting period is the calendar year. Certain types of activity (*e.g.* banking and insurance) require compliance with specific accounting procedures.

²² The *Law On State Control over the Use of Transfer Prices*, dated 5 January 2001.

²³ The *Law On Accounting and Financial Reporting*, dated 26 December 1995, as amended.

6. CURRENCY REGULATIONS

6.1 Introduction

Since the introduction of its own 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 2005 was 130 Tenge/US\$ 1. It is anticipated that the general tendency of strengthening of the Tenge will continue during 2005, due primarily to the fact that significant export proceeds in US\$ (mainly due to the high oil prices) do not have the necessary demand at the local currency market.

6.2 Foreign Exchange

In general, Kazakhstan’s foreign currency regulations are not overly restrictive. The *Law on Currency Regulation*²⁴ is the main piece of legislation governing foreign exchange transactions, and currency regulation is generally implemented by the NBK.

6.2.1 Residents

Rather more stringent currency regulations (some of which have been lifted or mitigated during 2003) apply to “residents.” Branches and representative offices of foreign entities established in Kazakhstan do not fall within the definition of residents for foreign currency purposes. However, in general, resident legal entities are subject to the following restrictions:

- Resident legal entities require a license from the NBK to open bank accounts outside Kazakhstan (but not to open Tenge and foreign currency accounts with banks established in Kazakhstan). To receive a license, they must submit to the NBK, *inter alia*, information regarding the commercial grounds for maintaining such an account. Holders of foreign currency accounts abroad must submit quarterly reports to the NBK detailing movements in their foreign currency accounts, as well as monthly statements in relation to such bank accounts;
- All payments between residents must be made in Tenge except as provided by regulatory acts of the NBK. The NBK, pursuant to a proposal by the Government of Kazakhstan, may permit resident legal entities implementing particularly important investment projects amounting to at least US\$ 100 million to conduct certain types of operations involving foreign currency, with residents of Kazakhstan;
- The purchase, sale, and exchange of foreign currency in Kazakhstan must be carried out through authorized banks or authorized organizations conducting certain types of banking operations. Transactions conducted outside of these organizations are prohibited without NBK approval. Cash funds from foreign currency accounts may be withdrawn for payment of wages to non-residents, or for expenditures involved in overseas business trips. Cash funds from foreign currency accounts in an amount not exceeding US\$ 10,000 per month may also be withdrawn for payment for goods during employees’ overseas business trips;

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

- The ability of residents to make payments in foreign currency to non-residents depends on whether such payments are “routine currency operations” or “operations involving the movement of capital.” Routine currency operations do not require NBK consent, and may be effected through authorized banks without restriction. Routine currency operations include:
 - Settlements relating to import/export transactions envisaging advance or deferred payments for a term of up to 180 days;
 - The grant and receipt of loans with a term of up to 180 days;
 - The transfer and receipt of dividends, interest and other income from deposits, investments, loans, and other operations;
 - Non-commercial transfers, including grants, transfers of legacies, wages, pensions, alimony and others; and
 - All other operations not classified by law as operations involving the movement of capital.

Operations involving the movement of capital include:

- Investments in another country (other than acquisition of more than 50% of the shares in companies which are incorporated in countries that are members of the OECD);
- Payment for ownership and other rights to immovable property (except for property which is equal to immovable property);
- Settlements related to import/export transactions envisaging advance or deferred payment for a period of more than 180 days;
- The grant and receipt of loans with a term of more than 180 days; and
- Transfer of currency valuables into trust management.

Operations involving the movement of capital from residents to non-residents (except for some export operations) require a license from the NBK, while those involving the movement of capital from non-residents to residents are subject only to registration with the NBK. Operations involving the movement of capital in the amount exceeding US\$ 10 million require, in addition to an NBK license, written consent from the Ministry of Economy and Budget Planning. Licenses to conduct operations involving the movement of capital are valid only for one transaction.

Residents must deposit any receipts from foreign currency transactions in their accounts maintained at authorized banks and financial institutions.

Resident legal entities may purchase foreign currency only in a limited number of cases, for example, if the purpose of the purchase is to make payment to non-residents or to meet obligations on loans received from authorized banks in foreign currency. If a resident purchases foreign currency at the domestic foreign currency market but does not use that money for the permitted purpose within 30 calendar days, that foreign currency must be re-sold at the domestic foreign currency market.

6.2.2 Non-resident Legal Entities

As noted above, 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 open off-shore bank accounts without restriction and deposit their funds off-shore. Non-resident legal entities may purchase foreign currency on the domestic foreign currency market for routine currency operations, and in other cases stipulated by legislative acts.

6.2.3 Individuals

The position for individuals is slightly more relaxed than for resident legal entities. However, individuals cannot use their accounts for business-related transactions, or for payment under contracts between legal entities where the individual is acting as a third party. Resident and non-resident individuals may purchase foreign currency at the domestic foreign currency market without limitation. Residents exporting currency in excess of US\$ 10,000 (or the equivalent thereof) must present documents confirming the legal source of the money. Non-resident individuals cannot take foreign currency out of Kazakhstan in excess of US\$ 3,000 (or the equivalent thereof) without documents confirming the legal source of the money. Resident and non-resident individuals may export foreign currency brought by them into Kazakhstan within the amounts specified in their entry customs declaration, including amounts in excess of the above limits.

7. EMPLOYMENT

7.1 Introduction

The employment of nationals and foreign citizens in Kazakhstan is regulated by the *Labor Law*.²⁵

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

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*,²⁶ 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 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 necessary to substitute for temporarily absent employees).

An employment agreement may establish a probation period which may not exceed three months. Prior to the expiration of the probation period, the individual employment contract may be dissolved without stating any reasons.

7.4 Dismissal

Kazakhstan does not follow the employment-at-will concept, and dismissal of an employee can be difficult. Permissible grounds for dismissal include (among others): reduction in 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; insubordination; intoxication; and theft. If the reason for

²⁵ The *Law On Labor in the Republic of Kazakhstan*, dated 10 December 1999, as amended.

²⁶ The *Law On Employment of the Population*, dated 23 January 2001, as amended.

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.

7.5 Minimum Wage

Wages may not be lower than the minimum monthly wage. The current minimum monthly wage for 2005 is 7,000 Tenge (approximately US\$ 55).

7.6 Working Week

The regular working week is five days (40 hours). The aggregate amount of permitted weekly overtime is limited to a maximum of four hours, and overtime 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 on non-working days and on official holidays must be compensated at a rate of 200% of the regular wage.

7.7 Holidays

There are eight official holidays in Kazakhstan. The minimum paid annual leave is 18 calendar days (excluding official holidays).

7.8 Sick Leave

Employees are compensated for temporary illness/disability in the amount of up to ten times the MCI (currently, approximately US\$ 75) as sick leave compensation, to be paid by the employer.

7.9 Maternity Leave

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

7.10 Cost of Employment

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

7.11 Withholding Obligations

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

7.12 Compensation in Foreign Currency

A representative office or a branch of a foreign legal entity may pay salaries to its employees in foreign currency 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.

7.13 Foreign Workers in Kazakhstan

7.13.1 Policy

The use of foreign labor in Kazakhstan is regulated by the *Law on Employment* and by the *Rules of Hiring Foreign Labor Force*,²⁷ which are intended to implement Government policy aimed at promoting and maximizing the employment of Kazakhstani citizens.

²⁷ Rules on Determining the Quota, Conditions and Procedure of Issuing to Employers of Permits to Attract Foreign Labor Force, as amended, approved by the Resolution of the Government of the Republic of Kazakhstan, dated 17 March 2004.

7.13.2 Work Permits

Employers (including resident legal entities and branches and representative offices of foreign legal entities) employing foreign employees in Kazakhstan must obtain a labor permit for each foreign employee. A permit is not required for the heads of representative offices or branches of foreign legal entities, the heads of banks, insurance and re-insurance companies, 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, those employees who are on business trips in Kazakhstan for a term not exceeding 45 days during one calendar year, and certain other categories of employees.

Steps to be taken by the employer before filing for the 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 nation-wide database; and
- Within the 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 skilled workers, and seasonal agricultural workers. Permits are not transferable and are issued, as a rule, for a period of one year. 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 undertake the following: training, re-training and advanced training of Kazakhstani employees, preservation of existing work places, and the creation of additional work places for Kazakhstani citizens.

In order to obtain a foreign labor permit, the employer must submit the required documents to the local executive authorities. The standard application form must be accompanied by confirmation that the employer has actively tried to locate employees on the domestic labor market, together with evidence that Kazakhstani citizens applying for the position were not suitably qualified, and confirmation that the job requires a command of foreign languages, work experience abroad, or the use of advanced technologies (if applicable). The process of issuing foreign labor 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 relocated to Kazakhstan, and submit these to the relevant local executive authority, enclosing the following documents:

- A copy of the executed employment agreement;
- Notarized copies of relevant certificates of education;
- An HIV medical certificate of an international standard;
- Documents confirming the 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).

7.13.3 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 2005 has been set at 0.28% of the "economically active population", and currently totals 21,500 persons.

8. PROPERTY RIGHTS

8.1 Introduction

The *Constitution* of Kazakhstan provides that land may be privately owned. The *Land Code*²⁸ is relatively favorable to foreign investors, permitting foreign individuals and legal entities with foreign participation to acquire certain interests in land.

8.2 Limitations on Ownership

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

Essentially, only Kazakhstani citizens 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 ten years. As a general rule, foreign citizens and legal entities cannot let land plots to which they have land use rights.

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

Land use rights may be either permanent,²⁹ or temporary,³⁰ 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 (other than 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.

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, as defined under the *Law on State Registration of Rights to Immovables*.³¹ 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. Both parties have the right to register the transaction in Kazakhstan. If one of the parties fails to register the rights, then the courts may compel registration.

²⁸ The *Land Code of the Republic of Kazakhstan*, dated 20 June 2003.

²⁹ Only state legal entities of the Republic of Kazakhstan can hold land by right of permanent use.

³⁰ Temporary land use rights may be short-term (up to five years) and long-term (from five to 49 years).

³¹ Decree of the President of the Republic of Kazakhstan having the force of Law “On the State Registration of Rights to Immovable Property and Transactions Therewith”, dated 25 December 1995, as amended.

9. LANGUAGE POLICY

9.1 General

Under the *Constitution* and the *Law on Languages*,³² the state language is Kazakh. This is the official language of administration, legislation, court proceedings and record-keeping. 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. In practice, Russian is the language of choice used for most contracts and Kazakh is not commonly used; current Government policy is to promote the use of Kazakh, however.

Seals (stamps) of 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, *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. 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*³³ 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 transactions between citizens, legal entities and the state. The *Civil Code* also sets out the basis for the regulation of corporate entities and property rights.

The General Part of the *Civil Code* guarantees the right to freedom of contract, and grants guarantees against arbitrary interference 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* governs many aspects of investors' activities, defining contractual relations for particular types of agreements including agreements for sale and purchase, leases, loans, commission agreements, agency agreements, insurance agreements, as well as agreements on transportation and storage. In addition, the

³² The *Law On Languages in the Republic of Kazakhstan*, dated 11 July 1997, as amended.

³³ 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.

Special Part regulates intellectual property rights, inheritance, and non-contractual damages.

In addition to the *Civil Code*, Kazakhstan has specific laws regulating different types of civil-law relations (e.g. the *Merchant Shipping Law*,³⁴ the *Financial Lease Law*,³⁵ and the *Transport Law*³⁶). However, in the event of any discrepancies between such laws and the *Civil Code*, the latter will prevail.

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*³⁷, and the *Law on the National Bank*,³⁸ among other laws.

Kazakhstan has a two-tier banking system, with the 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, but 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, 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 on 1 January 2004 of new legislation substantially reforming the regulation of Kazakhstan's financial market and, in particular, providing for the establishment of the Financial Supervision Agency (see Section 3.5.1 above), which supervises the financial market and its banking sector, the supervision of the financial industry was exercised by the NBK. The Financial Supervision Agency 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 the banking sector in Kazakhstan: the issuance of permits for their formation, the issuance of licenses for their operation, the approval of prudential norms for their activities (e.g. credit limits and limits on certain types of transactions), and the inspection of their operations.

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.

The *Law on Banks and Banking* contains the concept of transactions with 'related parties' as well as the concept of persons who are deemed 'affiliates' and/or 'major participants' in banks and, therefore, subject to supervision and control. The Financial Supervision Agency has the right, in certain circumstances, to demand that major shareholders in second-tier banks reduce their shareholding, to decide on the compulsory repurchase of their shares upon the Government's approval, and to sell their shares.

³⁴ The *Law On Merchant Shipping*, dated 17 January 2002, as amended.

³⁵ The *Law On Finance Lease*, dated 5 July 2000, as amended.

³⁶ The *Law On Transport*, dated 21 September 1994, as amended.

³⁷ The *Law On Banks and Banking Activities*, dated 31 August 1995, as amended.

³⁸ The *Law On the National Bank of the Republic of Kazakhstan*, dated 30 March 1995, as amended.

As of 1 January 2005 there were 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 fifteen banks with foreign participation (of which Citibank Kazakhstan, ABN AMRO Bank Kazakhstan, and HSBC Bank Kazakhstan are the largest). As of 1 December 2004, the gross equity of all second-tier banks reached 324.5 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. The Financial Supervision Agency (and, in some cases, the NBK) grants licenses for specific banking activities.

11.3 Standards for Banks

The Financial Supervision Agency establishes standard requirements for banks, including a minimum capital requirement. The minimum amount of charter capital for newly established banks is 2 billion Tenge. Equity of existing banks should not be less than 1 billion Tenge, and for regional banks (*i.e.* those located outside Astana and Almaty) not less than 500 million Tenge. There are additional capital requirements for banks intending to open branches and telling centers.

The senior management and personnel of banks also are subject to certain compulsory standards.

11.4 Banks with Foreign Participation

Banks with foreign participation are defined as second-tier banks in which more than one third of the shares are owned or managed by:

- Non-residents of Kazakhstan;
- Legal entities which are residents of Kazakhstan and in which more than half of the shares (participants' contributions) are held, owned, and/or managed by non-residents of Kazakhstan or similar legal entities which are residents of Kazakhstan; and
- Residents of Kazakhstan which are trustees of non-residents of Kazakhstan, or of the legal entities listed above.

Banks with foreign participation are subject to certain restrictions. The aggregate charter capital of all banks with foreign participation must not exceed 50% of the aggregate charter capital of all banks in Kazakhstan. At least one member of the management board of a bank with foreign participation must be a Kazakhstani citizen, with at least three years experience in a management position in a bank operating in Kazakhstan, and knowledge of the banking and economic legislation of Kazakhstan.

A bank with foreign participation must place a certain portion of its funds into internal assets, and at least 70% of its employees should be Kazakhstani citizens. The Financial Supervision Agency can establish additional requirements with respect to management bodies, the list of banking operations, prudential standards, and other norms and limits and reporting procedures for banks with foreign participation.

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. According to the NBK, there are currently 33 second-tier banks which 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. Banks may be voluntarily reorganized or liquidated only with the permission of the Financial Supervision Agency.

11.7 Non-banking Activity of Banks

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

11.8 Insurance

The insurance industry in Kazakhstan is regulated by the *Law on Insurance*³⁹ 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.

A resident insurer is deemed to be an insurer with non-resident participation if more than 25% of its voting shares are owned or managed by:

- A non-resident;
- A resident legal entity in which more than 50% of the shares or interest are owned or managed by non-residents; or
- Residents who are the nominee holders of securities for non-residents.

The law provides for restrictions on the foreign management of insurers with non-resident participation, and limitations on non-resident founders' and shareholders' ability to acquire an interest in a resident insurance company. There are also restrictions on the market share which insurers with non-resident participation may hold in Kazakhstan.

Kazakhstani resident insurers may reinsure risks with non-resident re-insurers, either directly or through foreign brokers, provided that the non-resident re-insurer has an appropriate rating from a ratings agency specified by the NBK. The law restricts local insurers from reinsuring 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.

Insurance broker activity is subject to licensing by the Financial Supervision Agency while the activity of insurance agents is not. Foreign companies may operate as insurance agents and insurance brokers.

11.9 Capital Amnesty

In April 2001, Kazakhstan was the first among the CIS nations to adopt a *Capital Amnesty Law*⁴⁰, providing a limited amnesty to citizens having illegally sent money abroad. The *Capital Amnesty Law* applied only to Kazakhstani citizens, who were permitted to repatriate certain funds that had been illegally transferred abroad. The *Capital Amnesty Law* primarily related to the legalization of funds on which tax had not been paid, and not to the legalization of any funds received from criminal activities, money laundering, and similar activities. All funds subject to legalization were required to be repatriated to

³⁹ The *Law On Insurance Activities*, dated 18 December 2000, as amended.

⁴⁰ The *Law On Amnesty of Citizens in Connection with Legalization of Capital*, dated 2 April 2001, as amended.

a special bank account during a 30-day legalization period which commenced in June 2001. The NBK estimated that approximately US\$ 480 million was brought back into Kazakhstan's economy as a result.

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*,⁴¹ the *Trademark Law*,⁴² the *Patent Law*⁴³ and the *Law on Selection Achievements*.⁴⁴

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 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 implemented 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 intellectual property rights 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. A Provisional Patent for an invention is granted for five years.

⁴¹ The *Law On Copyrights and Related Rights*, dated 10 June 1996, as amended.

⁴² The *Law On Trademarks, Service Marks and Appellations of Origin of Goods*, dated 26 July 1999, as amended.

⁴³ The *Patent Law*, dated 16 July 1999, as amended.

⁴⁴ The *Law On the Protection of Selection Achievements*, dated 13 July 1999, as amended.

This term may be extended for additional three years. A Patent for an invention is granted for 20 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 is five years, which may be extended for three years.

Patent protection is granted to an industrial design if it is novel, original and industrially applicable. A Provisional Patent for an industrial design is valid for a term of five years. 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, an assignment or license agreement must be registered with the CIPR to be valid.

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.

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 stage productions and phonograms of radio-broadcasting or cable-broadcast organizations (related rights). Copyright protection is granted to an author without any registration requirements. Rights to use a copyrighted work may be assigned. The copyright is protected for the lifetime of the author plus 50 years.

12.8 Computer Programs and Databases

Computer programs and databases are protected under the *Copyright Law*. The creation of computer programs, 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 “Anti-monopoly Agency”) and the Committee for Protection of Competition within the Ministry of Industry and Trade (the “Competition Committee”).

The Anti-monopoly Agency regulates entities operating within certain enumerated industries which are considered “natural monopolies.” Such industries include:

- Transportation of oil and oil products via major pipelines;
- Storage and transportation of natural gas and gas condensate via pipelines, and the operation of natural gas pipelines;
- Transportation of electrical and heat energy;
- Generation of heat energy;
- Provision of electricity dispatch services;
- Operation of main-line railways;
- 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;
- Leasing to other entities of duct banks and equipment for connecting telecommunication lines to the terrestrial telecommunication network (of an incumbent telecom operator);
- Operation of water and sewage systems; and
- Publicly available postal services.

The Anti-monopoly Agency maintains a registry of entities operating within such industries (such companies being referred to herein as the “natural monopolies”). Any acquisition of more than 10% of the shares in a natural monopoly must be reported to the Anti-monopoly Agency, while 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, requires the written approval of the Anti-monopoly Agency. A customer of a natural monopoly may not acquire or own (unless specifically permitted by the Agency) more than 25% of the shares in that natural monopoly.

Unlike the Anti-monopoly Agency, the Competition Committee regulates competitive behavior of entities other than natural monopolies. The Competition Committee maintains the register of entities having a dominant position in the market. Under the *Anti-monopoly Law*,⁴⁵ a legal entity is deemed to occupy a dominant position if, by virtue of its position in a certain market,⁴⁶ it has a negative impact on competition, impedes the access of other entrants to the market, or otherwise restricts freedom of economic activity. Such a position may be considered dominant only if it exceeds the market share as specified each year by the Competition Committee: such share being typically set at at least 35%.

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

- Creation of a new company (or a group of companies) whose market share will exceed 35% of the relevant market;

⁴⁵ The *Law On Competition and Restriction of Monopolistic Activity*, dated 19 January 2001.

⁴⁶ According to the *Anti-monopoly Law*, a market is the sphere of circulation of goods (works and services) having no substitutes or interchangeable goods (works and services).

- Acquisition of more than 20% of the voting shares in a company that has a dominant position;
- Acquisition of more than 10% of the tangible assets of a company that has a dominant position;
- Reorganization or liquidation of a company (or a group of companies) which has a dominant position (“reorganization” including mergers, consolidations and divisions of companies); and
- Acquisition by a person or a company of rights allowing it to direct the business activities of another company or to perform the functions of its managerial body, if the total value of the assets of the companies involved is above 100,000 times the MCI (approximately US\$ 750,000).

The vast majority of transactions requiring pre-completion approval by the Competition Committee fall within the latter category (*i.e.* acquisition of rights allowing the acquirer to direct the business activities of the target company, if the total value of the assets of the companies involved is above 100,000 MCI). If the total asset value of the companies involved is between 50,000 MCI (approximately US\$ 375,000) and 100,000 MCI (approximately US\$ 750,000), then no pre-completion approval needs to be sought, but the Competition Committee must be notified after the execution of the transaction. If the asset value of the parties involved in an asset acquisition transaction is below the minimum notification threshold (50,000 MCI) but the transaction may nevertheless lead to the acquisition of more than 35% of the relevant market, the transaction is also reportable before it is completed, and consent obtained from the Competition Committee in advance.

If a member of the board of directors of one company is appointed to the board of directors of another company, such appointment is subject to notification to the Agency if the combined asset value of the companies involved exceeds 50,000 MCI (approximately US\$ 375,000).

13.2 Protection from Unfair Competition

Under the *Law on Unfair Competition*,⁴⁷ the following activities constitute unfair competition:

- Illegal use of company names, trademarks, service marks, or other commercial signs;
- Imitation of the appearance of the goods of a competitor, its company name, trademark, service mark, marking of goods, and other commercial signs, as well as advertising matters, packaging, shape or other appearance of the goods of a competitor;
- Spreading false or incorrect information about the goods and services of a competitor;
- Unfair comparison of goods in advertisements;
- Price-fixing and other business acts aimed at limiting competition;
- Mergers of companies aimed at limiting competition;
- The receipt, use, and disclosure of confidential research and development, production, or trade information, including commercial secrets, without the consent of the owner of such information;

⁴⁷ The *Law On Unfair Competition*, dated 9 June 1998, as amended.

- Obtaining advantage by use of ‘dumping’ pricing strategies; and
- Other acts which limit or eliminate competition.

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. All income received from monopolistic activity can be confiscated to the state budget.

In the event of two violations of anti-monopoly legislation within one year, the Competition Committee can apply to court demanding that a legal entity having a dominant position in a given market be split up.

14. PRODUCT LIABILITY

14.1 Product Liability

The *Civil Code* and the *Consumer Protection Law*⁴⁸ govern product liability. The *Civil Code* outlines basic guarantees for consumers, including: the right to freely enter into agreements to purchase goods and services; the quality and safety of goods and services; and complete and accurate information concerning goods and services. The *Consumer Protection Law* further extends these rights, adding the right to safety of products, and 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.

A consumer may claim compensation from the seller and/or manufacturer if a defect exists, if the consumer has received unreliable or incomplete information concerning the product, or if the product has caused injury to health, life or property.

14.2 Product Quality

Quality is determined by reference to current norms and technical specifications applicable to that product. In the absence of specifications for a given product, norms and specifications for similar goods and services are applied.

14.3 Certification

Certain types of goods and equipment which are 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.

⁴⁸ The *Law On the Protection of Consumer Rights*, dated 5 June 1991, as amended.

15. SPECIFIC INDUSTRIES

15.1 Oil and Gas

15.1.1 Introduction

Subsurface resources such as oil and gas are the exclusive property of the state. Rights to engage in subsurface activity may be granted to foreign individuals and legal entities. Rights to subsurface use arise on the basis of a subsurface 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 *Subsurface Law*⁴⁹ and the *Oil Law*.⁵⁰ A number of other legislative acts regulate specific aspects of subsurface use.

The Parliament is currently considering the draft *Law on Production Sharing Agreements When Conducting Offshore Oil Operations*. This draft Law, if adopted, will regulate the execution and performance of off-shore production sharing agreements, as well as other aspects of conducting off-shore operations on the basis of a production sharing agreement.

In 1999 the Parliament introduced a number of important amendments to the subsurface legislation. These amendments eliminated the licensing requirement for subsurface use operations, giving contractors the right to engage in subsurface use operations by executing a subsurface use contract with the Competent Body of the Government, currently the Ministry of Energy and Mineral Resources. However, under these amendments all previously issued subsurface licenses will remain in effect until their expiry, including any periods of extension granted under legislation in effect at the time of their issuance.

A number of long-anticipated amendments to Kazakhstan's subsoil and oil legislation took effect on 1 January 2005, one of the most important being the addition of a provision to the *Subsurface Law* granting the Republic of Kazakhstan a pre-emptive right to acquire any subsoil use right and/or equity interest in a subsoil user that the holder wishes to transfer. Specifically, the Republic is given the right to acquire all or part of the rights being transferred, on terms "not worse than those offered by other purchasers." This pre-emptive right applies retroactively to all existing subsoil use contracts, as well as to future contracts.

15.1.3 Contracts

The Government annually approves a list of subsurface 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;
- Production sharing agreements; and
- Other types of contracts.

⁴⁹ The *Law of the Republic of Kazakhstan On the Subsurface and Subsurface Use*, dated 27 January 1996, as amended.

⁵⁰ The *Law of the Republic of Kazakhstan On Oil*, dated 28 June 1995, as amended.

Exploration contracts are concluded for a period of six years. This term may be extended twice for two-year periods if the contractor applies for such extensions 12 months prior to the contract's expiry. Production contracts are concluded for a period of 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 a period of up to 45 years. The effective term of a production contract may be extended if the contractor applies for an extension no later than 12 months prior to the expiration of the effective term of the contract.

The specific terms of the contract are determined by agreement between the parties in accordance with applicable laws and the *Model Subsurface Use Contract*.⁵¹ Every subsurface use contract must reflect the conditions of the *Model Subsurface Use Contract*, although the *Model Subsurface Use Contract* is merely the legal basis for a particular type of agreement, and 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.

15.1.4 Local Content Requirement

Kazakhstani legislation requires all oil and gas companies operating in Kazakhstan under licenses and/or contracts to organize tenders for most goods, work, 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. A similar requirement is applicable to purchases of goods, work and services by the state and state companies regardless of whether such purchases relate to oil and gas operations.

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 land-locked 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 agree shipment schedules with the national pipeline operator, Kaztransoil CJSC. 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 the total amount of oil to be produced in Kazakhstan in a given year.

There are currently only two operating pipelines: the Atyrau-Samara pipeline connects Kazakhstan to the Russian export network, while the long-awaited CPC pipeline (Tengiz-Novorossiisk) connects the Tengiz field with the Russian port of Novorossiisk on the Black Sea. This pipeline is already in operation, although there are few connections to this pipeline to date and it 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.

⁵¹ Resolution of the Government of the Republic of Kazakhstan "On the Approval of the Model Contract for Carrying Out Subsurface Use Operations in the Republic of Kazakhstan", dated 31 July 2001, as amended.

Kazakhstan has not yet defined its position on Azerbaijan's proposal to become a partner in the international BTC (Baku-Tbilisi-Ceyhan) Consortium currently building a 1,730-kilometer export pipeline with an annual capacity of 50 million tonnes. The BTC pipeline is expected to go into operation in late 2005.

15.2 Power

The energy sector is governed primarily by the *Law on Electricity*.⁵² 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.

15.3 Telecommunications

The primary legislative act regulating the field of telecommunications is the *Communications Law*.⁵³ 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 Information Technology and Communications (the "Agency on Communications").

Under the *Law on Licensing*⁵⁴ 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. Foreign legal entities or individuals may obtain a license to provide postal or telecommunications services on an equal basis with Kazakhstani nationals.

⁵² The *Law On Electricity*, dated 9 July 2004.

⁵³ The *Law On Communications*, dated 5 July 2004.

⁵⁴ The *Law On Licensing*, dated 17 April 1995, as amended.

In 2003 Kazakhstan adopted the *Law on Electronic Document and Electronic Digital Signature*,⁵⁵ which provides, *inter alia*, that an electronic document has the same legal force and effect as a document signed by hand, unless there is a need to notarize or register the document, in which case only documents signed by hand are acceptable.

15.4 Construction

The primary legislative act regulating the area of construction is the *Law on Construction*.⁵⁶

Most types of construction activities are subject to mandatory licensing in Kazakhstan. A Government Resolution⁵⁷ contains a detailed list of construction activities subject to licensing. Such activities range from the drafting of architectural plans and blue-prints to the construction, repair, alteration, and modernization of buildings and installations.

It generally is not possible for a foreign contractor to apply for and obtain a non-project specific “general contractor” type of license, allowing it to carry out all types of construction works in Kazakhstan. Instead, existing construction legislation permits a foreign contractor to apply for a license on the basis of a signed contract for a specific construction project.

Licenses must be obtained from local architectural bodies. An individual or company may apply for and obtain a license which covers one or a number of activities requiring licenses. Legal entities seeking to carry out construction activities in Kazakhstan for the first time will be issued a license for a term of one year. The license may be renewed subject to review by the licensing bodies.

The *Law on Construction* imposes certain restrictions on foreign participation in construction businesses in Kazakhstan. Notably, the *Law on Construction* prohibits a construction company from acting as a contractor in construction if the share of foreign participation in the charter capital of such construction company exceeds 49%.

15.5 Maritime Industry

Although Kazakhstan is considered a land-locked country, it has a comprehensive legal framework for its maritime industry. The reason for that is 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*.⁵⁸ The *Shipping Law* sets out certain specific requirements with which a foreign shipping company must comply in order to perform maritime transportation services in 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 is obliged to 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.

⁵⁵ The *Law On Electronic Document and Electronic Digital Signature*, dated 7 January 2003.

⁵⁶ The *Law On Architecture, Town Planning and Construction Activity in the Republic of Kazakhstan*, dated 16 July 2001, as amended.

⁵⁷ Resolution of the Government of the Republic of Kazakhstan “Issues Pertaining to Licensing of Activity in the Spheres of Architecture, Town Planning and Construction”, dated 10 January 2002, as amended.

⁵⁸ The *Law On Commercial Shipping*, dated 17 January 2002, as amended.

Finally, the shipping company is obliged to obtain all necessary government licenses and permits. Generally, two licenses must be obtained in order to perform shipping activity in Kazakhstan. The first license is issued by the Ministry of Transport and Communications for maritime transportation, the second license is issued by the Ministry of Environmental Protection for ecologically hazardous types of activity.

16. THE JUDICIAL SYSTEM AND DISPUTE RESOLUTION

16.1 Judicial Reform

During the 1990's, 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 2005, 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*.⁵⁹

The Kazakhstani court system consists of three levels: the Supreme Court of Kazakhstan; the local oblast courts and courts with equivalent oblast court status (for example, the Almaty 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. Oblast level courts (and city courts that are equal to oblast level courts) function as courts of appeal for some district court decisions. They are also courts of first instance for certain types of cases, including cases involving a foreign legal entity.

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. Other collegia sit at different times to hear civil and criminal cases.

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 traders) and administrative courts (which hear disputes related to challenging resolutions of state bodies levying administrative penalties).

⁵⁹ The *Constitutional Law of the Republic of Kazakhstan On Judicial System and the Status of Judges in the Republic of Kazakhstan*, dated 25 December 2000, as amended.

16.3 Judges

District court judges are appointed by the President on the recommendation of the Minister of Justice, which is in turn based on the recommendation of the Qualification Collegium of Justice. Oblast 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.⁶⁰

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 oblast 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.

The Qualification Collegium of Justice is an independent body which selects on a competitive basis candidates for positions as judges of district courts, and recommends them for appointment. The Qualification Collegium of Justice consists of the Chairman (appointed by the President), deputies delegated by the Mazhilis, judges selected by the Plenary Meeting of the Supreme Court, a prosecutor appointed by the Prosecutor General, a law lecturer and a law scholar appointed by the Ministry of Justice upon coordination with the authorized agency in the sphere of science and education, and a justice officer delegated by the Ministry of Justice.

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

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 clarified that its ruling did not apply to foreign arbitration awards rendered in accordance with international treaties to which Kazakhstan is a party. Nevertheless, notwithstanding 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*⁶¹ and the *International Commercial Arbitration Law*.⁶² While it is too early to evaluate the impact of this new legislation, one of its objectives was to finally end the uncertainty and controversy concerning the right to arbitrate and the enforcement of arbitration awards.

⁶⁰ 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.

⁶¹ The *Law On Arbitration Courts*, dated 28 December 2004.

⁶² The *Law On International Commercial Arbitration*, dated 28 December 2004.

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 contains provisions for the process 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. Further, the *Arbitration Courts Law* specifically permits state courts to review an arbitration award on its merits if the court determines the award is not in compliance with Kazakhstani law or violates public policy. As a result, an arbitration award by a local “arbitration court” may not be final or enforceable.

The *International Commercial Arbitration Law* roughly follows 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 entity; 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).

16.4.2 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 treaties to facilitate the enforcement of foreign court judgments,⁶³ 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.

⁶³ The treaties were concluded with, among others, North Korea, Lithuania, Uzbekistan, Pakistan, China, Kyrgyzstan, Mongolia, Turkey, Turkmenistan, Azerbaijan, Georgia and Bulgaria.

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