

KPMG IN KAZAKHSTAN AND CENTRAL ASIA

# Investment guide

August 2013

[kpmg.kz](http://kpmg.kz)



# Contents

<b>Country outline</b>	<b>2</b>	<i>Intellectual property</i>
Geography and climate		<i>Environmental regulations</i>
History		<i>Transfer pricing</i>
Government and politics		Other business practices
Population and language		<i>Tendering process for state companies</i>
Currency		<i>Use of stamps and seals</i>
Banking system		<i>Original documents</i>
Foreign trade		Taxation
Capital market		<i>Taxation of business entities in Kazakhstan</i>
Opening up		<i>Taxation of individuals in Kazakhstan</i>
<b>Key investment considerations</b>	<b>8</b>	<i>Protection of taxpayer rights</i>
Key investment sectors		Customs
Overall approach		Accounting standards and audit requirements
Laws and regulations		Development zones
<i>Investment law</i>		<b>Migration regulations</b>
<i>Company law</i>		<b>26</b>
Form of foreign investment		Visa requirements
<i>Legal entities</i>		<b>KPMG in Kazakhstan</b>
<i>Branch offices and representative offices</i>		<b>28</b>
<i>Not-for-profit organizations</i>		About us
<i>Practical issues</i>		How KPMG can help?
<i>Employment legislation</i>		Thought leadership
<i>Employment of expatriates</i>		<b>Appendices</b>
<i>Securities regulation</i>		<b>30</b>
<i>Currency regulation</i>		Useful links
<i>Kazakh content requirements</i>		Current Kazakhstan treaties
<i>Business activity without forming a legal entity</i>		







Country  
outline

## Geography and climate

The ninth-largest country in the world and the second largest state in the Commonwealth of Independent States (CIS), Kazakhstan is bordered by the Russian Federation to the north, the Caspian Sea to the west, China to the east and the former Soviet Central Asian republics of Kyrgyzstan, Uzbekistan, and Turkmenistan to the south. Kazakhstan is a country of contrasts, a land where Europe meets Asia. The northern half of the country is mostly steppe, the south and west are largely arid or semi-arid desert, and the majestic Tien Shan Mountains surround the southeast rim.

The remoteness of Kazakhstan from the oceans and the vastness of its territory define the climatic conditions of the country. The climate of Kazakhstan is distinctly continental. Temperatures vary immensely by region, with the most dramatic differences between the deserts and mountains. The southern regions have milder winters and hotter summers than the northern and central regions. The steppes experience especially harsh winters due to strong, cold winds from the north. There are great variations between seasons. The summers are hot, with temperatures reaching 40 degrees Celsius, and the winters are often bitterly cold, with temperatures falling to negative 40 degrees Celsius.

Tremendous natural resources and relative social and political stability in Kazakhstan make this country one of the most attractive destinations for capital investment among the republics of the former Soviet Union. Although the pace of reform in the country has been uneven and the country's development has been hindered by excessive bureaucracy and corruption, Kazakhstan has experienced significant growth since the mid-1990s. At the same time, Kazakhstan must continue to undertake political, economic, and social reforms and clean up its environment if the country is to achieve its full potential as an agricultural and industrial power driven by its enormous mineral wealth.

## History

The history of the Central Asian landmass is one of prosperity, hardship and conflict, invading nomads and seasonal migrations, vast steppes and animal husbandry. Horses were first bred and domesticated in the region. Ancient history records fair-haired and blue-eyed peoples. The migration of Turkic tribes in the sixth century brought to the region its Turkic languages. The spread of Arab culture brought Islam. For the next few centuries the region prospered. Located along the ancient Silk Route, the Turkic city-states traded with the Orient and Europe and developed a rich culture that lasted until the Mongol invasion in the 13th century. Genghis Khan's hordes devastated the region: trade withered, culture declined. The weakening of the Mongols led to the establishment of the Kazakh and Uzbek Khanates and the founding of the Kazakh nation in the 15th Century. The Kazakhs fought a century-long war with the invading Jungarian nomads before becoming Russian subjects.

**Table 1. Country snapshot**

<b>Capital:</b>	Astana
<b>Area (sq km):</b>	2,724,900
<b>Population (mln):</b>	17.0 <sup>1</sup>
<b>Cities over 1 mln:</b>	1 (Almaty)
<b>President:</b>	Nursultan Nazarbayev
<b>Prime Minister:</b>	Serik Akhmetov
<b>Currency:</b>	Tenge (KZT)
<b>Number of regions:</b>	14 regions and 3 cities of state/special importance (Almaty, Astana, Baikonur)
<b>Corruption index rank:</b>	133 out of 174 <sup>2</sup>
<b>Ease of doing business:</b>	49 out of 185 <sup>3</sup>
<b>KASE market capitalization (USD mln)</b>	35,500 <sup>4</sup>
<b>Number of listed companies (July 2013):</b>	127 <sup>5</sup>

Although at first the union with Russia provided the Kazakhs with external protection and a degree of internal autonomy, eventually Russia began to dominate the region, restricting the power of the native khans and sultans, appointing and dismissing Kazakh chieftains almost at will. The reforms in the early 1900s resulted in the immigration of hundreds of thousands of Slavic colonists. The transfer of fertile land in favor of the new settlers agitated relations between the largely nomadic Kazakhs and the agricultural Slavs. Discontent among the Kazakhs grew until a rebellion erupted in 1916, sparked by a Tsarist order mobilizing Kazakhs into construction units for the Russian army. Although the rebellion was put down with force, the fall of Tsarism led to the brief establishment of the Nationalist Alash Republic. However, by 1921 Kazakhstan was firmly in Soviet hands.

<sup>1</sup> <http://stat.kz/Pages/default.aspx>

<sup>2</sup> <http://www.transparency.org/cpi2012/results>

<sup>3</sup> <http://www.doingbusiness.org/rankings>

<sup>4</sup> <http://www.kase.kz/ru/shares>

<sup>5</sup> <http://www.kase.kz/emitters>

During the next 70 years change and turmoil transformed Kazakhstan's landscape and permanently altered the life of the Kazakh people. Soviet attempts to collectivize agriculture in the early 1930s resulted in a major famine. A million Kazakhs died of starvation; hundreds of thousands fled to neighboring countries. The 1930s were also the beginning of major development of Kazakhstan's mining and metals industries. The relative emptiness of the steppe and the inhospitable climate made Kazakhstan a convenient dumping ground for political prisoners from all over the USSR, tens of thousands of whom died building the industries and the cities in Kazakhstan. The war years resulted in the relocation of major industries and evacuees from the European part of the Soviet Union; many of them stayed at the war's end. As part of the "virgin lands" campaign, more settlers came in the 1950s from all over the USSR to develop agriculture in Kazakhstan's northern regions.

The Soviet legacy provided for the industrial development of Kazakhstan and a great rise in the standard of living for the indigenous people. It also included ecological disasters of major proportions. Dozens of open-air and hundreds of underground nuclear weapons tests were performed at the Semipalatinsk test site in North-eastern Kazakhstan between 1949 and 1989. Water from the Syr Darya and Amu Darya rivers that previously fed the Aral Sea was channeled toward cotton production areas in Uzbekistan and southern Kazakhstan. The sea lost most of its water and shriveled to 40 percent of its former size. As a result, Kazakhstan now faces major ecological problems that require substantial international aid.

In 1989 Nursultan Nazarbayev became the First Secretary of the Communist Party of Kazakhstan and at the end of 1991, the country's President. The last republic to declare independence and leave the USSR, Kazakhstan found itself a new state in December of 1991, unsure of its position in the world and facing political, economic, interethnic, and ecological challenges.

The 1990s were difficult years of transition from a socialist to a market-oriented economy. President Nazarbayev's strong presidency has kept the country politically stable. The new millennium and the high prices for oil and other mineral resources exported by Kazakhstan have brought significant revenue into the country and enabled Kazakhstan to modernize some of its industry and infrastructure. The standard of living has also increased, with the former capital city of Almaty boasting at one point the dubious distinction of being one of the 30 most expensive cities in the world. At the same time, the full measure of the country's new-found wealth is yet to trickle down to its outlying regions and rural areas and the most vulnerable population groups.

The Republic of Kazakhstan has now become a member of the world community and enjoys universal recognition and the support of many of the world's leading countries. Kazakhstan is extending its cooperation with important international organizations, including the United Nations Organization, the World Bank, the International Monetary

Fund, the World Health Organization, the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, UNICEF, UNESCO, and other organizations. Kazakhstan also chaired the Organization for Security and Cooperation in Europe (OSCE) in 2010. The Government of Kazakhstan is also negotiating its planned accession to the World Trade Organization (WTO), and it is likely that the country will join the WTO in the next few years. Kazakhstan also plans to enter OECD in the near future. In 2017 the International Specialized Exhibition (Expo 2017) is scheduled to take place in Astana, the capital city of Kazakhstan.

## Government and politics

In 1993 Kazakhstan promulgated its first post-Soviet constitution, which officially declared Kazakhstan an independent constitutional republic with a democratic system of government and a strong presidency. In a referendum held in August 1995, voters approved a new constitution that provided for substantial changes in the way power is distributed among the three branches of government.

The President is the head of state and wields most political power in the country. Occupying that post since 1991, Nursultan Nazarbayev was re-elected for another seven-year term in April 2011. The Prime Minister heads the executive branch and is responsible to the President for the day-to-day activities of the Government. The Parliament consists of two chambers: the Majilis and the Senate, whose members are elected to five-year and six-year terms, respectively. Although nominally the Parliament is the supreme legislative body, its powers in comparison to those of the executive are relatively weak. Kazakhstan is a unitary state; however, for administration purposes the country has been divided into 14 oblasts, or regions, and the cities of Astana and Almaty, which have the equivalent of a regional status. Each region is headed by an Akim (Governor) who is appointed by the President.

## Population and language

Because of its large territory, Kazakhstan is one of the least densely populated countries in the world, with a population density of 5.8 persons per square kilometer. Approximately 17 million inhabitants live in Kazakhstan: over 60 percent of the populace are ethnic Kazakhs, around 25 percent are ethnic Russians. In addition to the two main ethnic groups, over 120 other nationalities live in the country: Ukrainians, Germans, Uzbeks, Tatars, Koreans, and others. Nearly 56 percent of the population lives in towns and workers' settlements; the rest reside in rural areas. Principal cities include the former capital of Almaty and the new capital of Astana (formerly Akmola), Karaganda, Shymkent, Atyrau, Aktau, Pavlodar, Taraz (formerly Jambyl), and Semey (formerly Semipalatinsk). The state language is Kazakh. However, Russian together with Kazakh are used as official languages of government and commerce, although the most recent trend shows that Kazakh will be the only official language of the state authorities.

## Currency

The official currency of Kazakhstan is the tenge. It is divided into 100 smaller units called tiynds. The currency was introduced on 15 November 1993, replacing the Soviet ruble. Currently printed denominations are 200, 500, 1,000, 2,000, 5,000 and 10,000 tenge.

## Banking system

The National Bank has been established as the first tier of Kazakhstan's banking system and is responsible for implementing the country's monetary policy, supporting the stability of the national currency, setting interest rates, and developing banking, currency regulation, and financial markets legislation. Other banks and financial institutions constitute the second tier of the banking system and are subject to regulation and licensing by the National Bank.<sup>6</sup>

At the time of writing there are 38<sup>7</sup> banks in Kazakhstan, reduced from about 220 in 1994. A number of foreign-owned banks have also established operations in Kazakhstan. Although certain restrictions exist on foreign investment in the banking sector, the number of foreign banks in Kazakhstan and the scope of financial services provided to clients are likely to increase.

Although the banking system has recovered somewhat, it remains depressed due to its exposure to non-performing loans caused by profligate lending to the construction and real estate sectors. As a result, banks are now generally cautious in lending to companies and individuals, and loan and mortgage rates remain high.

## Foreign trade

The major trading partners of Kazakhstan are Russia, member states of the European Union, the US, Uzbekistan, China, Turkey, and Ukraine. Kazakhstan's major exports include the following: oil and oil products, ferrous and non-ferrous metals, machinery, chemicals, grain, wool, meat, coal. Major imports of the country are machinery and spare parts, industrial materials, gas, vehicles etc.

## Capital market

Kazakhstan's stock market is considered to be one of the most developed markets of the ex-USSR countries. JSC Kazakhstan Stock Exchange (KASE) is the only stock market in Kazakhstan, founded in 1993 in Almaty. KASE is a commercial organization, which organizes the trading of financial instruments in Kazakhstan. The stock market can be divided into the following major divisions: forex, repo, government securities, stock trading and derivatives markets.

**Table 2. Key economic indicators**

Year	2009	2010	2011	2012
<b>Nominal GDP (USD bln)</b>	115	148	188	202 <sup>8</sup>
<b>Real GDP growth (%)</b>	+1.2	+7.3	+7.5	+5
<b>GDP per capita (USD)</b>	7,165	9,070	11,357	12,068
<b>Foreign direct investments (USD mln)</b>	19,138	18,076	21,056	22,469 <sup>9</sup>
<b>Inflation (%)</b>	6.2	7.8	7.4	5.9 <sup>10</sup>
<b>Foreign reserves (USD mln)</b>	23,091	28,275	29,328	28,280 <sup>11</sup>
<b>Average exchange rate USD/KZT</b>	147.50	147.35	146.62	149.16
<b>Oil and gas contribution to GDP (%)</b>	22.3	22.6	24.6	25.2 <sup>12</sup>

<sup>6</sup> In addition to banks, various financial institutions perform a range of financial activities on the basis of a license issued by the National Bank of Kazakhstan. These activities include real estate appraisal, custodial and clearing activities, currency exchange and insurance activity. Activities associated with stock market operations also require a license from the National Bank of Kazakhstan.

<sup>7</sup> <http://www.afn.kz/?docid=461>

<sup>8</sup> <http://invest.gov.kz/?option=content&section=1&itemid=67>

<sup>9</sup> <http://www.nationalbank.kz/?docid=680>

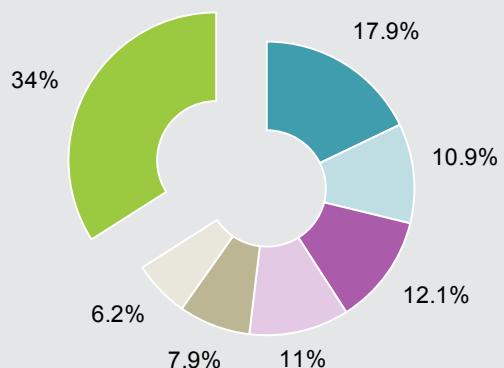
<sup>10</sup> <http://stat.kz/Pages/default.aspx>

<sup>11</sup> <http://www.nationalbank.kz/?switch=rus>

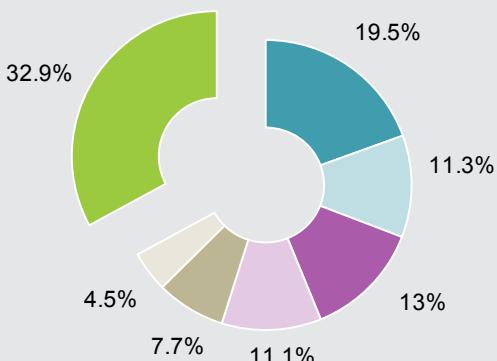
<sup>12</sup> Экспресс-информация №Э-05-03/162 от 19 апреля 2013 года Валовой внутренний продукт методом производства за 2012 год

## Sectoral contribution to GDP (%)<sup>\*</sup>

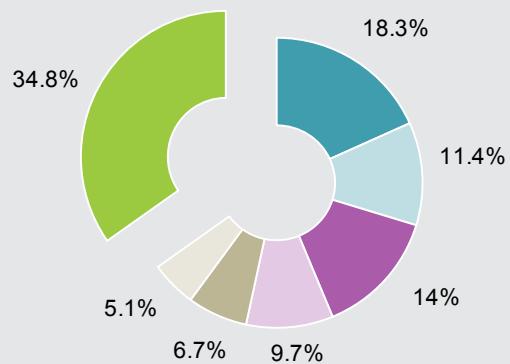
2009



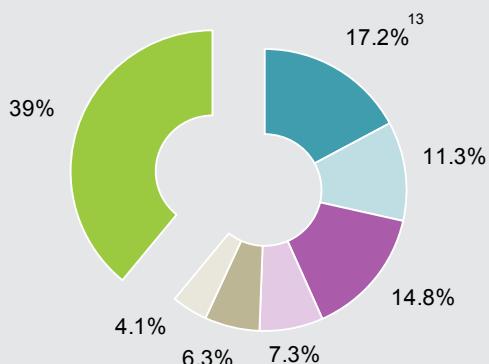
2010



2011



2012



■ Mining   ■ Processing and Manufacturing   ■ Trade   ■ Transport and communication   ■ Construction  
 ■ Agriculture   ■ Other

### Opening up

Kazakhstan possesses enormous untapped fossil fuel reserves and plentiful supplies of minerals, including coal, uranium, chrome, an array of rare metals, lead, tungsten, copper and zinc. It also has considerable agricultural potential with its vast steppe lands accommodating mainly grain production but also livestock. Kazakhstan's industrial sector largely rests on the extraction and processing of these natural resources; the consumer goods sector is relatively small but is growing.

Skyrocketing inflation and problems with the Russian Central Bank's management of the ruble led Kazakhstan to leave the ruble zone in 1993 and introduce its own currency, the tenge, which subsequently devalued by almost 85 percent in the course of a year. Assisted in part by donor agencies such as the World Bank and USAID, the government pursued macroeconomic stabilization, which by 1996 brought inflation down to reasonable levels.

Strong national institutions were established. The National Bank in particular received wide respect from international financial agencies for its inflation-fighting ability and is considered to be one of the best in the CIS. The country was able to attract substantial amounts of foreign direct investment (FDI), predominantly into the natural resource and energy sectors, and by 1997 it could boast of being the largest FDI recipient per capita in the former Soviet Union.

From 1995 to 1997 the pace of the government program of economic reform and privatization quickened, resulting in a substantial shift of assets into the private sector. On the privatization front, the government has had mixed success. Although widespread privatization of state assets was undertaken, it failed to achieve its ambitious goal of redistributing national wealth to the citizenry.

<sup>13</sup> Экспресс-информация №Э-05-03/162 от 19 апреля 2013 года Валовой внутренний продукт методом производства за 2012 год

\* Official statistics do not reflect oil and gas sector separately in this breakdown

For a time prior to the Russian currency crisis in the summer of 1998, it looked like the economic situation had stabilized and begun to improve. Over USD 7 billion had been invested in the Kazakhstan economy, primarily in the petrochemicals and mineral resource sectors. Most of the growth had been unevenly distributed, however, and remained tied to the few favored sectors, while the rest of the economy languished.

Kazakhstan's economy turned downward in 1998 with a 2.5 percent decline in GDP due to slumping oil prices, falling commodity prices and reduced demand for Kazakhstan's products as a result of the crisis in Asia. The ruble's collapse in August 1998 and its consequences severely tested the government's crisis-management abilities.

Well-timed tenge devaluation in early 1999 and a bumper harvest that fall helped keep the economy afloat; and the year 2000's soaring oil prices fueled growth in GDP to almost 10 percent. As world commodity prices stabilized in 2001, Kazakhstan achieved 13.2 percent GDP growth, its best economic performance since 1991.

Cumulative foreign investments, high oil and commodity prices, and conservative fiscal policies allowed Kazakhstan to achieve economic stability and spectacular growth in the first eight years of the new millennium. Boasting one of the highest growth rates in the world, Kazakhstan's GDP grew by 8 percent or more per year between 2000 and 2007 and has reached approximately USD 100 billion, or about USD 6,600 per capita. The extraction of oil, gas, metals and minerals has also increased; the country's current total annual oil production of approximately 67 million tons makes it the second-largest producer in the CIS.

The post-2001 rise in oil and commodity prices has brought tremendous wealth into the country and stimulated the construction industry. Astana, the new capital, has been transformed from a sleepy Soviet provincial town to a modern city of some 700,000, tripling its population in less than a decade. The former capital of Almaty has also enjoyed tremendous growth, and life in other cities and towns has improved significantly.

Although for a time it seemed that there were no natural limits to this boom and that Kazakhstan was destined to enjoy many more years of uninterrupted record growth, Kazakhstan's economy was severely tested by the global financial crisis and the rapid fall in oil and commodity prices since the summer of 2008. With demand for the country's raw materials suddenly contracting, Kazakhstan's economy underwent a significant slowdown, if not an outright contraction. Unable to stem foreign currency outflows and facing the loss of substantial amounts of the country's foreign currency reserves in an attempt to prop up the tenge, the National Bank of Kazakhstan devalued the tenge in February 2009 by about 25 percent. On 28 February 2011 Kazakhstan reintroduced a managed floating exchange rate regime with respect to the national currency to reduce local currency fluctuations. The Government also made great efforts to support a number of local banks, investing funds in BTA and Alliance to overcome the economic downturn. Given Kazakhstan's substantial dependence on commodity exports and international financial markets for financing its economic growth, the fate of Kazakhstan's economy is inextricably tied to that of the global economy. Although the government has undertaken various measures to stimulate the economy, high levels of growth are unlikely to resume until the global economy recovers and there is sustained demand once again for Kazakhstan's natural resource bounty.

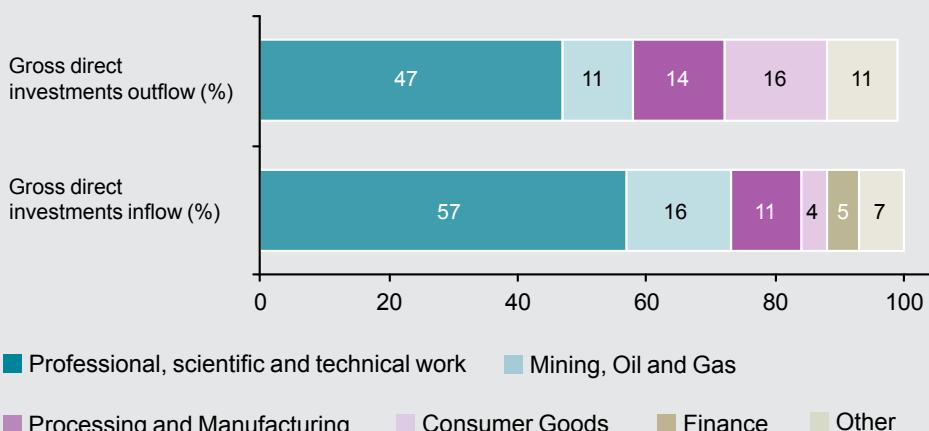




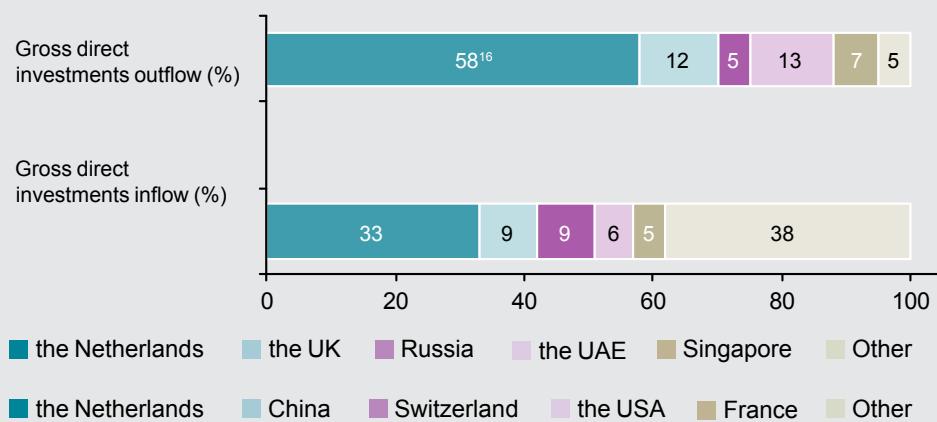
# Key investment considerations

## Key investment sectors in 2012

### Top 5 economic sectors<sup>14</sup>



### Top 5 economic countries<sup>15</sup>



## Overall approach

In recent years, the foreign investment climate has undergone considerable change, with the government becoming more assertive with respect to foreign investors. Seeking to equalize the treatment of domestic and foreign investors, the President signed the Investment Law to supersede the prior Foreign Investment Law and the Law on State Support of Direct Investment. The new law has removed some of the preferential treatment hitherto available to foreign investors and made investment contracts more vulnerable to changes in domestic legislation and international treaties. The Kazakh government approved the national plan for the attraction of foreign investments, development of special economic zones and stimulation of exports (hereinafter, the “Plan”), which is the updated program for the attraction of foreign investments approved in 2010. The Law on the Use of the Subsoil now allows the government to unilaterally amend a subsoil use contract if the subsoil user’s activity leads to significant changes in the government’s economic interests, resulting in a threat to national security.

Furthermore, the Tax Code also derecognized tax stability clauses in most subsoil use contracts that were not structured as production sharing agreements. The government has also begun to enforce investor obligations more actively, particularly those dealing with environmental protection, national content, local staff training and other requirements, sometimes in an arbitrary fashion. Consequently, it has become even more important to structure ones investment and commercial activities properly, so as to be compliant with the law.

<sup>14</sup> <http://www.nationalbank.kz/?docid=680> Иностранные инвестиции в Казахстан в разрезе отраслей вложения по состоянию на 31 декабря 2012 года

<sup>15</sup> <http://www.nationalbank.kz/?docid=680> Валовый приток иностранных прямых инвестиций в Казахстан по странам

<sup>16</sup> <http://www.nationalbank.kz/?docid=680> Валовый отток иностранных прямых инвестиций из Казахстана по странам вложения

## Laws and regulations

### Investment law

#### General

The Investment Law sets out the legal framework regulating investment in Kazakhstan. It outlines state guarantees of investors' rights, provides for state support of investment activities, and establishes a dispute resolution mechanism. The primary purpose of the law is to attract investment by creating stability and transparency in the law and stimulating investment in specified priority sectors of the economy.

The law does not distinguish between foreign and domestic investors. However, it provides that in cases of conflict between provisions of the Investment Law and bilateral investment treaties ratified by Kazakhstan, the treaties shall prevail. Some of these treaties may provide useful protections to foreign investors in addition to those provided under Kazakhstan law.

#### State guarantees

The Investment Law provides investors with certain state guarantees. Investors have the general right to invest in any object or activity unless specific provisions of Kazakhstan legislation provide otherwise. Investment in some territories may also be restricted by law for reasons of national security.

The law protects investors that have a contract with a state agency against adverse changes in legislation or international agreements. However, this guarantee does not apply to changes in legislation or international treaties that amend the procedure or conditions for importation, production or sale of excise goods, or laws dealing with defense, national security, ecological safety, health protection or ethics.

In addition, the state provides the following guarantees to investors:

- a guarantee of protection provided by the Constitution, other legislative acts and international agreements that Kazakhstan has signed;
- a guarantee of compensation for damages resulting from the promulgation of acts or decrees that do not conform to the laws of Kazakhstan or from illegal actions or failure to act on the part of state officials;
- a guarantee of free use of income from investment activities, provided that all taxes and other compulsory payments have been paid, and a right to open bank accounts in tenge and in foreign currencies;
- a guarantee of transparency of the activities of state agencies affecting investors, including publication of normative and legislative acts relating to investors' rights and free access to information about legal entities;
- a guarantee of full compensation for damages in case of nationalization of investments and the payment of fair market value for confiscated property. The law allows nationalization and requisition of property for the state's needs only in exceptional cases provided by legislative acts of the Republic of Kazakhstan;
- a guarantee of access to international arbitration bodies in cases of investment disputes between the investor and the state.

#### State support of investment

In order to create a favorable investment climate for economic development, the law grants incentives for certain investments. Incentives are granted for investment in priority sectors of the economy on the basis of an investment contract concluded by the investor with the Investment Committee of the Ministry of Industry and New Technology of Kazakhstan (the Investment Committee). The list of priority sectors of the economy currently includes industrial infrastructure, processing industries, housing construction, the social sphere (education, medical, sports and entertainment facilities), tourism, communication, production of nuclear materials and agriculture.

#### Incentives available under the law

Although under prior legislation qualifying investors that signed investment contracts with the state were eligible for tax privileges for a specified time period, depending on the volume of their investment in fixed assets, those tax privileges were removed on the adoption of the Tax Code. In accordance with the Law on Investment, the Investment Committee may grant the following privileges to investors that sign investment contracts with the state:

- exemption from customs duties on imports of equipment and components required for the realization of an investment project; and
- state grants in kind with a maximum value of up to 30 percent of the value of investment in fixed assets.



### Dispute resolution

Under the Law on Investments, investment disputes can be settled through negotiations, the Kazakhstani courts or international arbitration. However, the definition of an investment dispute has been narrowed to cover disputes ensuing from the contractual obligations between investors and state bodies in connection with the investor's investment activities. The Law on Investments states that disputes between foreign and Kazakhstani entities not falling within the definition of an investment dispute must be resolved in accordance with the legislation of Kazakhstan, but the Civil Code states that the parties to a contract may specify a foreign law as the controlling law for dispute resolution purposes. Because under Kazakh legislation, Kazakhstan legislative codes have priority over laws, the Civil Code has priority over the Law on Investments, which means that contracts should be able to make reference to a foreign law as controlling law. In practice, it is common for Kazakh companies and foreign companies doing business in Kazakhstan to enter into contracts under foreign legislation. While the parties to a contract may stipulate international dispute resolution venues in their contracts and Kazakhstan has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, arbitral award enforcement remains difficult in practice. The situation is further exacerbated by a December 2004 law on international arbitration, which appears to provide Kazakhstani courts with the authority to review foreign arbitral decisions. Investors should therefore take proper care in structuring their transactions and investments in Kazakhstan.

### Company law

Kazakhstan has made impressive strides over the last 20 years in creating a legal foundation for the development of a market economy. Written with the assistance of Western lawyers sponsored by USAID, the World Bank, the Asian Development Bank, TACIS and other donor agencies, Kazakhstan's legislation is fairly progressive when compared with that of some of the other CIS states. Key accomplishments include:

- adoption of one of the first civil codes, tax codes and customs codes in the CIS;
- adoption of progressive corporate and commercial legislation; and
- the establishment of respectable national institutions such as the National Bank of Kazakhstan.

Much of Kazakhstan's business-related legislation is already second and third-generation law and is still evolving. As the economic situation changed, new laws were introduced. If fault can be found with Kazakhstan's legal system, it lies with the inconsistencies and gaps in legislation created by the patchwork approach to drafting legislation, corruption, and the failure of some officials to comply with the law.

Kazakhstan is a civil law jurisdiction. Judicial decisions have no basis in precedent, and consequently, the legislation is aimed at providing guidance in any and all situations of uncertainty that might arise. The Constitution is the supreme law of the land. Other sources of law include parliamentary acts, presidential edicts, and Constitutional Council and

Supreme Court decisions, all of which have different legal force in accordance with the priorities set by the Law on Normative Legal Acts. In addition, secondary regulatory acts are issued by government ministries and agencies to fill the gaps left by primary legislation.

The Civil Code governs most aspects of civil and commercial relations in Kazakhstan, including property and contractual relations. The Civil Code is generally progressive and provides for the freedom to contract, the inviolability of private property, and restrictions on the state's ability to arbitrarily interfere in a person's private affairs. As a general rule, civil legislation does not apply to property relations based on the state's tax, administrative, or police powers, all of which remain quite extensive.

### Form of foreign investment

Kazakhstan company law can be characterized as modern and corresponding closely to international principles of corporate legislation. The Civil Code and related laws permit both local and foreign entities a high degree of flexibility in structuring their business activity in Kazakhstan. Available business structures include a representative office, a branch office, a legal entity, and a simple partnership of companies (or consortium). The primary differences between these various business structures relate to the entity's legal status, the scope of its rights, the nature of the relationship between the entity and its owners, and taxation. As a general rule, the law does not discriminate between domestically-owned legal entities and Kazakhstan subsidiaries of foreign legal entities.

### Registration

All legal entities established in Kazakhstan, their branches and representative offices, and branches and representative offices of foreign legal entities operating in Kazakhstan, must be registered with the governmental authorities. The procedure governing such registration is provided by the Law on the State Registration of Legal Entities and Registration of Branches and Representative Offices and subordinate regulations.

The Ministry of Justice has been designated as the "one-stop shop" responsible for the registration of legal entities, branches and representative offices. Under the new procedures, the justice authorities perform all registration procedures and issue all necessary documents, including the state registration certificate and tax registration certificate.

As part of the registration process, applicants for registration are required to submit a standard package of documents for examination by the registering body, including the charter of the company to be registered approved by the Minutes of the General Meeting of Participants/Shareholders (changes to the charter should also be approved by the General Meeting). If the documents are in order, a registration number is assigned and a certificate of state registration is issued. The entity is then recorded in the state register of legal entities, branches, and representative offices. Alternatively, a written denial of registration may be issued.

After the state registration is completed, the registering body sends a notification to the state statistics authorities. The statistics authorities assign a unique identification code to the registering company. The tax authorities register a company and issue a tax registration number after receiving notice from the statistics authorities. After issuing a tax registration number to a company, the tax authorities must send a registration certificate to the legal authorities, which the legal authorities then provide to the newly registered taxpayer.

Business activity is not permitted until registration is completed with all of the aforementioned state bodies. An entity may also be required to obtain a license prior to the beginning of its activity in Kazakhstan.

### Legal entities

A legal entity is liable for its obligations to the extent of all its property. A legal entity may on its own behalf:

- acquire and use property and personal non-property rights and obligations,
- sue and be sued, and
- conduct any type of activity that is not prohibited by legislation or by the terms of its founding documents.

Internal governance of a legal entity is performed in accordance with its founding documents, which consist of a Charter (bylaws) and a Foundation Agreement (Memorandum of Association) if there is more than one founder. No Foundation Agreement is required if a company has only one founder. The founding documents establish the rights and obligations of the entity's founders (participants), the authorities of its management bodies, and capital contribution and profit distribution requirements. A legal entity – like branches and representative offices of legal entities – is regarded as created from the time of its registration with the territorial bodies of the Ministry of Justice of the Republic of Kazakhstan, which maintain a state register of entities.

The most common forms of organization of a legal entity are a limited liability company (LLC) and a joint stock company (JSC). With some exceptions, the laws governing LLCs and JSCs follow the standards of corporate law generally used in North America and Europe. While these companies vary in their minimum capitalization and share transferability, they both provide for stable rules of corporate governance and a degree of fiduciary responsibility for the company's management and directors.

By and large, these entities have similar corporate structures. The supreme governing body of each entity is the General Meeting of Participants or Shareholders, which has exclusive authority over the most important issues affecting the company, such as amending its charter, granting or terminating the authority of executive boards and other bodies, and reorganizing or liquidating the entity. The participants of the company are also authorized to approve certain transactions to which the company plans to be a part. The company may also have a governing board or supervisory body such as the Board of Directors of a JSC or

the Supervisory Council of an LLC, which is responsible for setting general policy during the period between the General Meetings. A director or a collective executive body such as the Management Board manages the company's day-to-day affairs. A company can also establish a monitoring body such as an internal auditor or an audit commission to monitor the company's financial and economic activities.

### Limited Liability Companies

Designed primarily to be a closely held company whose participants place a special premium on control, an LLC (also known by its Russian acronym: TOO<sup>17</sup>) is a legal entity whose charter capital is divided into ownership stakes, the size of which is stipulated in the founding documents.

An LLC may be created by individuals or legal entities and may have only a single owner. A Kazakh LLC may not be wholly owned by another LLC unless the parent entity has at least two owners. Generally, LLC participants are not liable for the entity's obligations and bear the risks associated with the company's activities only to the extent of their equity contributions to the LLC's charter capital.

As a general rule, an LLC's net income is distributed among its participants in proportion to each participant's contribution to the entity's charter capital. LLC participants may by agreement establish the value of non-monetary contributions to the LLC's charter capital, such as know-how, licenses, equipment or other property. An independent appraisal is required if the value of a participant's non-monetary contribution to the LLC exceeds an amount equal to 20,000 times the monthly index factor,<sup>18</sup> or about USD 230,000 at the present exchange rate.



<sup>17</sup> "TOO" stands for "Tovarischestvo s Ogranichennoi Otvetstvennost'yu", which literally means a limited liability partnership (LLP). However, because the nature of a "TOO" is more akin to that of an LLC rather than a classical LLP in the Western sense of the word, we use the term "LLC" to describe Kazakhstan TOOs.

<sup>18</sup> An index known as the monthly index factor (MIF) is frequently used in Kazakhstan in calculating various levies that are established by legislation as some multiple of the MIF. For the year 2013 the MIF is set at KZT 1,731 for the calculation of administrative fines and penalties.

One of the most attractive features of an LLC is the amount of the minimum permissible charter capital, which is only 100 times the MIF, or about USD 1,150 at the present rate of exchange. Although, as a general rule, the transfer of LLC ownership stakes to a third party is allowed, the exercise of that right can be restricted in the LLC's founding documents.

#### **Joint Stock Companies**

A JSC (also known by its Russian acronym: AO) is a legal entity that issues shares of stock in order to attract the capital necessary for its activity. A JSC may be created by individuals or legal entities and may have only a single owner. As a general rule, JSC shareholders are not liable for the JSC's obligations and bear the risks associated with the functioning of the JSC only to the extent of their equity contributions to the company.

Since JSCs are designed to enable investors to raise capital relatively easily, JSC shareholders have the right to transfer their shares at any time without the consent of other shareholders. There is no upper limit on the number of shareholders that a JSC may have. The minimum charter capital of a JSC is 50,000 times the MIF, or approximately USD 573,000 at the present rate of exchange.

#### **Stock and securities**

Kazakhstan company law allows JSCs to issue a wide variety of debt and equity instruments to achieve their objectives. For example, JSCs may issue warrants, options, bonds, debentures, and convertible securities.

At the same time, JSCs may also issue a variety of equity instruments to their shareholders, including common stock, golden shares,<sup>19</sup> and preferred shares, as long as the total number of the preferred shares does not exceed 25 percent of the total number of authorized shares of the JSC.

#### **Subsidiaries**

A company is regarded as a subsidiary if another company has the power to control its activities. This may be, for instance, because of the controlling entity's predominant ownership of the company's charter capital or in accordance with an agreement between the entities.

A subsidiary is not responsible for the debts of the controlling entity. In contrast, if the controlling entity has an agreement with the subsidiary that gives it the right to require the subsidiary to perform certain actions, the principal entity is liable for transactions conducted by the subsidiary in accordance with such instructions. Similarly, if the subsidiary's bankruptcy is caused by the controlling entity's improper actions, the controlling entity is liable for the subsidiary's debts.

As a general rule, participants or shareholders of a subsidiary have the right to demand compensation or damages from the controlling entity if the loss suffered by the subsidiary is caused by the improper actions of the controlling entity.

#### **Simple partnerships**

A simple partnership under Kazakhstan law is somewhat similar to a partnership in the Western sense in that it involves two or more parties entering into an agreement to pursue a joint activity for profit. The participants' contributions of assets to the partnership and the assets that are created or acquired as a result of such joint activity are the common shared property of the participants in the joint activity, which have clearly defined ownership stakes. No legal entity is created, and the participants are jointly and severally liable for obligations unless the agreement on joint activity provides otherwise. A participant may transfer its rights and obligations in the joint activity to a third party only with the approval of all the other participants.

If all the participants of a simple partnership are legal entities, such an organization is called a consortium. A consortium is a temporary association or union of legal entities which pool together their resources and coordinate their activities to pursue specific business objectives. The consortium participants retain their legal and financial independence and may participate in other consortia or associations.

The consortium agreement regulates the rights and duties of the participants in the joint activity, the time period for which the consortium is created, and the objectives pursued. As a general rule, consortium participants are jointly and severally liable for the obligations related to consortium activities unless the consortium agreement provides otherwise. A consortium ceases to exist once its objectives are achieved or its participants agree to terminate it.

#### **Branch offices and representative offices**

A representative office is a subdivision of a legal entity and does not have the status of a separate legal entity. It carries out the protection and representation of the interests of the principal entity of which it is a part. Technically, a representative office may engage only in representative and marketing functions on the principal entity's behalf and is not allowed to conduct revenue-generating commercial activity, although it can derive non-business income from foreign exchange gains, interest income on bank deposits and gains on disposals of fixed assets. Actions of the representative office create rights and obligations for the principal entity.

A branch office does not have a status of a separate legal entity, which carries out all or part of the functions of the entity of which it is a part, including both business activity and representation functions. A branch does not have the status of a separate legal entity, and actions of the branch create rights and liabilities for the principal entity.

<sup>19</sup> A "golden share" grants only the right to veto a decision of the executive and governing bodies of a JSC on certain issues specified in the JSC's Charter. Owners of golden shares are not involved in the formation of a JSC's charter capital and are not entitled to dividends.

### **Management bodies of branches and representative offices**

Both branches and representative offices are governed by the principal entity's officers or management bodies which, in accordance with the entity's founding documents, have the authority to make decisions concerning the branch or representative office. This may include, for instance, the CEO, the Board of Directors, or the Management Board. The exclusive authority of these bodies or persons typically includes the power to amend the statute governing the branch or representative office, approve quarterly and annual reports, and reorganize or liquidate the branch or representative office.

A manager or director performs routine management of the branch or representative office on the basis of the authority provided in a power of attorney issued by the authorized officer or management body of the principal entity. The manager may thus be given the right to sign lease agreements or employment contracts with local staff, acquire property required for the achievement of the branch or representative office's objectives, and conduct negotiations with potential business partners. Although there are no legal restrictions prohibiting the management of the branch or representative office by two or more co-managers, only one official should be designated as "Manager". The other person or persons may perform the functions of a deputy manager at the discretion of the principal entity.

### **Not-for-profit organizations**

A variety of not-for-profit organizations are permissible under Kazakhstan law. A not-for-profit organization may engage in entrepreneurial activity only to the extent that such activity contributes to the goals indicated in the organization's charter. A not-for-profit organization may be established in one of the following forms: institution, public association, joint-stock company, production cooperative, public fund, religious association.

### **Entrepreneurial activity of individuals**

Kazakhstan nationals and foreign nationals who are permanent residents of Kazakhstan may register as individual entrepreneurs and engage in business activity without forming a legal entity. Under Kazakhstan law, persons engaged in entrepreneurial activities must register with the tax authorities if they either hire employees on a permanent basis or have gross annual income from entrepreneurial activity exceeding the amount of annual income that is non-taxable for individuals, which at the present time is about USD 1,483. Individual entrepreneurs may also need to obtain a state license if they engage in activities that require licensing.

As a general rule, an individual entrepreneur is liable for his business obligations to the extent of all his personal property (with the exception of property that is exempt under the law). The insolvency of an individual entrepreneur is grounds for his bankruptcy.

### **Practical issues**

#### **Licensing**

Kazakhstan law provides that all persons and business entities seeking to conduct certain activities listed in the Law on Licensing must be licensed by the state. The performance of specified activities without a license is unlawful. Licenses are issued by the relevant ministries and state agencies acting as licensors. Licenses may be either general or specific and can be issued for a limited or an unlimited time period. If other permission is also required for the performance of an activity – for example, land allotment, radio frequency allocation, etc. – such permission may be issued only after the applicant obtains the necessary license. Otherwise, such permission is considered to be invalid.

The number of days necessary for the issuance of a license and (or) appendix to the license is 15 business days from the date when the application and all required documents are submitted. Under the Law on Licensing, it takes 30 business days to obtain a license for the following activities:

- the use of nuclear energy;
- financial operations and activities related to concentration of financial resources.

#### **Liability for violation of registration and/or licensing requirements**

Revenues received from business activity in violation of registration and/or licensing requirements are potentially subject to confiscation by the state. The executives of entities that fail to comply with these requirements may also face administrative and criminal penalties.

#### **Changes in corporate structure**

Kazakhstan legislation establishes straightforward rules regarding changes in corporate structure. A company may be reorganized either on a voluntary basis by a decision of its founders or in a compulsory manner by a decision of a court of law. With the exception of an acquisition, reorganization is effective from the date when the new entities are registered with the state. In the case of an acquisition, the acquiring company is considered reorganized from the date when the acquired company's termination is recorded in the official register of legal entities.

The succession of the rights and obligations of legal entities that reorganize is determined on the basis of a transfer act or a partition balance sheet. A transfer act or a partition balance sheet must contain succession provisions for all receivable and payable obligations of the reorganizing entity, including disputed obligations. Unless otherwise provided by legislation or the reorganization decision, the property, rights, and obligations of the reorganizing entity transfer to the successor entity at the time when it is registered with the state.

Companies that emerge as a result of a division or spin-off are jointly and severally liable for the reorganizing company's obligations, unless the partition balance sheet allocates liabilities among those companies.

Failure to submit to the justice authorities a transfer act or a partition balance sheet with the founding documents of the new entities or failure to include in those documents properly completed succession provisions may cause the registration applications for the new entities to be denied.

#### **Liquidation**

Under Kazakhstan law, a company may be liquidated by a decision of a General Meeting of its Participants or Shareholders or by a decision of a court of law. Voluntary liquidation implies that a company is solvent and makes full settlement with its creditors.<sup>20</sup> If a company is not solvent and has insufficient property to satisfy the full amount of creditor claims against the company, the company may be liquidated through a bankruptcy.

In addition to bankruptcy, a company's activity may be terminated on the following grounds:

- Failure by an LLC's participants to fully pay in the LLC's charter capital within the timeframe provided by legislation;
- Determination that the company's registration as a legal entity is invalid because of prior violations during the establishment of the company which cannot be subsequently rectified;
- Systematic performance of an activity which is not permitted by the company's charter;
- Performance of an activity without an appropriate license or permit;
- Performance of an activity prohibited by Kazakhstan legislation or repeated or gross violation of Kazakhstan legislation, including the company's failure to submit a corporate income tax declaration or a simplified tax declaration within one year after the deadline for the submission of the declaration;
- Absence by the company and its founders and principal officers from its legal or business address for a period of one year;
- A decrease in the amount of the company's charter capital below the minimum amount stipulated by law.

#### **Bankruptcy**

If a company is insolvent or financially unsound, it may be declared bankrupt. The Law on Bankruptcy specifically provides that a debtor must seek a judicial declaration of bankruptcy if the company's owners or responsible internal bodies made a decision to liquidate the company and the company has insufficient property to satisfy the full amount of its creditors' claims. The debtor's failure to file an application for bankruptcy when required to do so by law subjects its chief executive to liability for the debtor's obligations.

Creditors, the tax authorities, and the state procurator may also initiate bankruptcy proceedings.

Ordinary courts consider bankruptcy cases, following the general rules governing legal proceedings and the specific requirements of bankruptcy law. Participants in a bankruptcy case include the debtor, creditors, a representative of the debtor's employees, the procurator, and a representative of the local Ministry of Finance committee responsible for insolvent debtors.

Once bankruptcy proceedings are initiated in court, the debtor company loses the right to dispose of its assets. Creditors' claims on the debtor may be submitted only within the legal framework governing bankruptcy cases; all creditors' attempts to collect funds from the debtor's accounts or to levy claims on the debtor's property outside the bankruptcy process are stayed.

Within seven days after the initiation of a bankruptcy case, the court must publish an announcement that the case was accepted and legal proceedings have begun. The court must consider a bankruptcy case within two months after the receipt of the bankruptcy application.

Once a court issues a decision to recognize a debtor as bankrupt, liquidation of the debtor begins. The liquidation procedure must be completed within nine months after a court's decision and is designed to satisfy creditors' demands as fully as possible and discharge the debtor's debts. The debtor's property is accumulated and distributed to creditors in accordance with the order of priority established by bankruptcy law.

Once all settlements with creditors are completed, the legal entity is recognized as bankrupt and is released from its debts. An entry is then made in the state register of legal entities that the debtor's existence is terminated. However, a debtor may not be released of its debts if it tried to avoid obligations by hiding property or transferring property to third parties within three years prior to the filing of the bankruptcy application.

#### **Employment legislation**

The Labor Code is the principal legislative act regulating labor relations in Kazakhstan. Adopted in May of 2007, the Labor Code applies to all employment relations in Kazakhstan and covers all employers, including offices of foreign entities.

The Labor Code seeks to balance the interests of employers and employees and establish certain minimum labor protection standards, while providing additional benefits for women and for persons with families. The Labor Code states that other legislative acts may not reduce employee protections and guarantees. It invalidates any provisions of employment agreements and employer acts which attempt to establish employment conditions that are less favorable than those provided by legislation. Employees are guaranteed freedom of employment, safe labor conditions, the right to adequate compensation and rest, equal opportunity, and the right to unite for the protection of their interests. Employers are also prohibited from discriminating on the basis of race, ethnicity or tribal affiliation, language, gender, age, physical deformity, official or social status, residency, religion, political opinion or participation in public associations.

---

<sup>20</sup> A company is solvent when it is able to meet its liabilities and any other monetary claims when due, including the payment of wages, compensation for damages to life or health, and obligatory payment of taxes or other payments to the state. A company is considered to be unable to make full settlement with creditors if it fails to perform its obligations within three months following the time when such obligations become due.

### ***The employment agreement***

An employment relationship generally arises once an employment agreement is signed between an employer and an employee. An employment agreement must be in writing and enters into force from the date of its execution or the date established by the agreement. In general, an employee may not be admitted to work until the employment agreement is signed. The Labor Code establishes specific requirements regarding the contents of an employment agreement. An employment agreement may be concluded for either an indefinite term or for a defined term of not less than one year, except for employment agreements with employees hired for specific services, temporary employees hired to replace other employees who are temporarily unavailable, or seasonal employees.

Foreign nationals entering into labor relations with Kazakhstan companies are required to provide their employers with apostilled degree certificates and professional qualification in addition to a list of other documents in order to support their expertise in a particular area.

### ***Probation period***

An employment agreement may provide for a probationary period,<sup>21</sup> which may not exceed three months. If an employment agreement does not provide for a probation period, the employee is regarded as hired without a probationary period. If the employer is dissatisfied with the employee's performance during the probation period, the employer may terminate the employment agreement by providing written notice to the employee, provided that the notice is issued not earlier than seven calendar days prior to the expiration of the probation period and states the employer's reasons for terminating the employee.

### ***Work hours, overtime, work on weekends and holidays***

The Labor Code provides that a standard work week may not exceed 40 hours per week. Employees may be required to work overtime or during weekends and holidays, provided that they consent in writing to such work. The employer may require an employee to work overtime or during weekends or holidays even without the employee's written consent if such work is necessary to prevent or eliminate an emergency or a natural disaster or to perform urgent unforeseen work which is required for the proper functioning of the organization. The amount of overtime that employees may work is limited by law, and Kazakhstan legislation does not provide for any waivers from overtime limits for company executives or expatriate employees.

Overtime work, night-time work, and work on weekends or holidays must be compensated at a rate which is higher than the employee's standard wage. The employer is responsible for recording the time actually worked by each employee, including the hours worked at night, on weekends and holidays, during business trips, and overtime.

### ***Business trip authorities***

Under the Labor Code, an employer is entitled to send its employees on business trips within and outside Kazakhstan, and any business trip should be supported by properly executed documents. To initiate a business trip, the head of a company or his/her authorized representative should sign a business trip order specifying the period, destination, purpose of the business trip and the amount of per diems payable to the employee for the purpose of performing his/her duties during the business trip. Sometimes a business trip order can be supplemented with a statement of work which normally specifies the scope of work to be performed by an employee during a business trip.

In addition, for the purpose of tracking the number of days an employee spends on a business trip, an employer should prepare and sign a business trip certificate ("komandirovochnoe udostovereniye") to be signed at the place (or places) where the employee will perform his/her duties on the date when the employee leaves the place of work. The validity of the signature should be verified with the stamp of the organization where the employee works during the business trip.

### ***Timesheets***

Under Kazakh legislation, an employer is required to maintain records of time spent by each employee on performing his/her duties under the labor agreement for the purpose of calculating salaries, leave allowances and compensation payments. The amount of time spent at nights, weekends, holidays, business trips and overtime work should be recorded separately from an employee's normal work hours.

The amount of time spent should be specified in documents established by the employer. There are no specific requirements for the document and the law not specify responsibility for maintaining the records: it can be either an HR or accounting function, at the employer's discretion.

### ***General authority by the head of a company***

The head of a company has the authority which he/she obtains from the participants/shareholders of the company in accordance with the company's charter. In addition to day-to-day management of the company, the head of a company shall also be responsible for the following:

- acting on behalf of the company without a power of attorney;
- issuing powers of attorney to other individuals to deal with third parties on behalf of the company;
- arranging the preparation and implementation of resolutions of the General Meeting of Participants/ Shareholders or Board of Directors;
- managing the Company's human resources department and addressing issues related to employee benefits, compensation, hiring, termination and/or dismissal;
- all other matters which are not within the exclusive authority of the General Meeting of Participants, specified in the charter or approved by resolutions of the General Meeting of Participants/Shareholders or Board of Directors.

<sup>21</sup> A probation period may not be established for recent university and professional secondary school graduates who are hired for their first job in their field of study or for persons hired as a result of a competition for a vacant position.

### Vacation and leave

The minimum annual paid vacation leave has been set at 24 calendar days. An employer must allow an employee to take his or her annual paid leave and must pay the employee the amount due for the vacation period at least three calendar days prior to the beginning of the vacation. The annual vacation may be split into parts by agreement between the employer and the employee and may be carried over, at the employee's request or with his or her written consent, to the following year. An employee may not defer his or her vacation for more than one year.

Pregnant women are entitled to 126-140 calendar days of paid maternity leave, which includes 70 calendar days prior to the childbirth plus an additional 56 calendar days (70 calendar days if the childbirth was medically difficult or if two or more children were born) after childbirth. The employer must provide the time off from work, and the state pays the allowance to the woman.

### Special protections for women and other persons with families

If on the expiration date of her employment agreement a female employee provides a medical certificate to her employer which states that she has been pregnant for at least 12 weeks, then, at her written request, the employer must extend the employment agreement until the date when her child turns three years of age. Employers also may not terminate employment agreements with pregnant women, women with children under three years of age, single mothers with children under 14 or disabled children under 18, or other persons responsible for similar categories of children, except in certain circumstances established in the Labor Code. However, termination for cause, incompetence, non-pregnancy-related temporary disability exceeding two months, and certain other grounds is permissible, and an employer may be able to terminate a non-performing pregnant employee, provided its grounds for doing so are properly documented.

### Termination of an employment agreement

An employment agreement may be terminated by mutual consent of the parties, by its expiration, at the initiative of either the employer or the employee, or for other reasons established by either the Labor Code or the employment agreement.

If an employee is terminated by the employer because of staff reductions, the employer must provide a written notice to the employee at least one month prior to the termination of the employment, unless the employment agreement or a collective labor agreement provides for a longer notice period. Employers also must notify the labor authorities of anticipated employee lay-offs in connection with a company downsizing at least one month prior to the lay-offs. In addition, the employer must make a compensatory payment to the employee in the amount of the employee's average monthly salary, unless the employment agreement or a collective labor agreement provides for a larger compensation amount.



### Employment of expatriates

Kazakhstan is undergoing a transition period, which creates certain anomalies to a foreign observer. Prices for many goods are the same as or higher than in most countries and rental prices for quality housing are generally expensive. Much of the economy still operates on a cash basis, although the number of stores and restaurants that accept credit cards is rapidly increasing. ATMs are now widely available in the cities. Because of the breakdown of the subsidized health system, quality health care has declined, and despite the government's increased investment in recent years in the health and insurance service sectors, they are far below western standards. Vaccination prior to arrival in the country is generally recommended, as is health and medical evacuation insurance.

### Legal status of expatriates

As in most countries, foreigners visiting or residing in Kazakhstan are largely subject to the same rules as the country's citizens, with the obvious restriction of certain political rights and absence of military service obligations. Although foreign citizens have a right to education, employment, and health protection, as a matter of practice, expatriates are generally required to pay for their educational and health care costs.

### Visa and registration requirements

Entry into Kazakhstan requires possession of a valid passport and, in most cases, a visa (please refer to page 47 for the description of types of visa necessary for entering Kazakhstan by foreign nationals). New simplified procedures have been established for the issuance of visas to foreign nationals from most North American and Western European countries. Nationals of these countries do not need an invitation letter from a Kazakh inviting party as a prerequisite to applying for a Kazakh visa and can apply directly to a Kazakh embassy or consulate in another country for a Kazakh visa.

All foreigners must register with the migration police within five business days following their arrival in Kazakhstan, except for citizens from about two dozen developed countries, who are automatically registered at the airport for a 90-day period. Failure to register with the state authorities can subject the unregistered expatriate to fines and possible deportation.

Russian citizens arrived in Kazakhstan on 7 June 2012 and later are allowed to stay in Kazakhstan for a period of up to 30 calendar days without registration with the migration police. If a period of stay exceeds 30 calendar days, the registration with the migration police shall be arranged in line with the procedure in place.

#### **Foreign employee work permit**

A company that invites foreign specialists to work in Kazakhstan is required to obtain a permit allowing it to do so. The procedure for obtaining a permit includes the payment of a deposit guaranteeing the departure of the expatriate. In addition, the prospective employer must provide to the state labor authority various documents which typically evidence that no comparably qualified local candidates are available on the local labor market. Heads of branch offices and representative offices of foreign legal entities, employees of diplomatic missions or international organizations in Kazakhstan, and certain other categories of employees may work in Kazakhstan without a work permit, although in some cases their employer must submit a form to the Kazakhstan state authorities which testifies to their education, years of professional work experience, and duration of their employment agreement or a power of attorney for heads of branch offices and representative offices.

The work permit process is difficult and cumbersome, and diplomats and employers have frequently called for improvements to the work permit system and an increase in the quota levels. The number of work permits issued each year in Kazakhstan is limited by both employee category and region of employment. Work permit quotas were slightly increased in 2012 as the Kazakh economy began to recover. The total work permit limit for 2012 is one percent of the economically active population in Kazakhstan, or approximately 92 000 work permits, split among various categories of employees.

The Government of Kazakhstan recently approved new rules for employing foreign staff in Kazakhstan. The new rules require employers to comply with specified limits on the number of foreign staff they employ before a work permit may be issued to them. The limits apply to all employers other than small companies, but will be cancelled once Kazakhstan becomes a member of the World Trade Organization. Failure to observe the new limits is grounds for the revocation of work permits. Additionally, employers that violate the limits are precluded from obtaining new work permits for 12 months from the date when the violation is confirmed.

The new limits are scheduled to be phased in as follows:

- from 1 January 2012 the total number of foreign specialists already employed or scheduled to be employed in the employer's first and second personnel category may not exceed 30 percent of the employer's total number of category one and two specialists (generally management/specialist categories);
- from 1 January 2012 the total number of foreign specialists already employed or scheduled to be employed in the employer's third and fourth personnel categories may not exceed ten percent of the employer's total number of category three and category four specialists (generally clerical/technician categories).

The above-mentioned limits do not apply to representative offices of foreign legal entities and subsoil users involved in the Karachaganak, Tengiz and North-Caspian projects and (or) their operators, contractors, subcontractors.

The new rules also exempt employers from the need to obtain work permits for the attraction of employees who are citizens of Russia and Belarus.

#### **Securities regulation**

Despite continuous efforts by the government to increase the importance of Kazakhstan's securities market, the current securities exchanges play a relatively minor role in the country's economic development. Foreign investor participation is also relatively low. As a result, since 2005 over a dozen Kazakh companies have sought to raise funds abroad by making initial public offerings on foreign stock exchanges, primarily in London, and this trend could continue in the future once the global economic downturn recovers.

To spur the development of the Kazakhstan securities market, in 2006 the government announced the creation of the Almaty Regional Financial Center (RFCA), which was designed to establish a regional stock exchange that would be used by companies from Central Asia, Siberia, and western China. Although Kazakhstan legislation provides various incentives to RFCA investors and participants, the regulatory framework for the RFCA is still evolving, and the trading floor of the RFCA has a relatively low daily trading volume. The global financial crisis further dampened investors' interest in securities issued by local companies. It therefore remains to be seen whether the RFCA's role as the engine of economic growth for Kazakhstani and regional issuers will be fulfilled.

#### **Currency regulation**

Currency regulation in Kazakhstan is governed primarily by the Law on Currency Regulation and the National Bank's regulations. The national currency, the tenge, is freely exchangeable within Kazakhstan, and few restrictions are placed on the import and export of foreign currency to and from Kazakhstan. Kazakhstan legal entities, their branches and representative offices inside and outside the country, citizens of Kazakhstan and individuals who have Kazakhstan residence permits are considered to be residents for currency regulation purposes. This includes Kazakhstan subsidiaries of foreign companies and Kazakhstan individuals who travel or reside temporarily abroad. Foreign legal entities, their branches and representative offices, and foreign citizens, except for those who have Kazakhstan residence permits, are treated as nonresidents for currency regulation purposes.

Transactions between residents and nonresidents may be conducted in any currency. In contrast, currency transactions in foreign currency between residents are prohibited, with certain exceptions.

The purchase, sale, or exchange of foreign currency in Kazakhstan may be conducted only through authorized banks and currency exchanges that are licensed by the National Bank to perform foreign-currency transactions. The purchase, sale, or exchange of foreign currency other than through authorized entities is prohibited.

Both residents and nonresidents may have foreign-currency and tenge accounts in Kazakhstan banks, which they can use for their personal and business needs. Resident legal entities must notify the National Bank within 30 calendar days after the date when they enter into a contract with a foreign bank to open a bank account.

Certain international bank payments and transfers between residents and nonresidents can be executed without restriction. However, in some cases residents must either register a transaction with the Kazakhstan National Bank or notify the National Bank of the transaction, depending on the type of transaction. Bank payments need to be supported by a contract, payment orders and/or remittance advice, or bank statements, and an invoice.

### ***Kazakh content requirements***

Kazakh legislation prescribes certain obligations for subsoil users. Among them is the obligation to employ Kazakh personnel, engage Kazakh producers of works and services, and purchase goods and raw materials of Kazakhstan origin whenever feasible. In general these obligations are called Kazakh content in personnel, services/work and goods. Subsoil users are obliged to procure Kazakh goods, works and/or services if those goods, works and/or services meet standards, price and quality characteristics of similar goods, works and/or services of non-Kazakh origin. If the Kazakhstan market is unable to offer the necessary products, subsoil users are entitled to acquire goods, works and/or services from a foreign producer. Nonetheless, subsoil users must give priority to goods, works and/or services of Kazakh origin and fulfill certain obligations with regard to the number of Kazakh personnel, so that the percentage of Kazakh content in companies' operations, which is calculated in accordance with Kazakh legislation, is not less than the minimum number allowed.

In this light, the Kazakh government takes a tough line towards subsoil users who violate their contractual obligations regarding the percentage of Kazakh content in their operations. According to current legislation, the state authorities are entitled to ignore subsoil users' applications for contract extension or for switching to the next stage of their contracts and to unilaterally terminate subsoil use contracts if the subsoil users violating the Kazakh content requirement fail to rectify violations of their contractual obligations.

### ***Business activity without forming a legal entity***

In certain instances, Kazakhstan law also allows individuals and business entities to engage in business activities without forming a legal entity. This takes the form of individual entrepreneurial activity or a simple partnership between individuals and/or legal entities.

### ***Intellectual property***

The area of intellectual property rights is regulated by Kazakh civil law. Kazakhstan has ratified certain international intellectual property documents and joined certain international conventions for the protection of intellectual property.

### ***Environmental regulations***

Kazakhstan faces several important environmental issues and seeks to make improvements in the environmental control. The environmental legislation stipulates strict ecological requirements for subsoil users at all the stages of subsoil use. Breached environmental legislation can lead to a withdrawal of one's subsoil license.

### ***Transfer pricing***

Kazakhstan's Transfer Pricing Law applies to any cross-border transactions for the sale or purchase of goods and services if the transaction price deviates from an arm's length price. As a rule, the Transfer Pricing Law does not stipulate any safe harbor for any price deviation. Companies engaged in cross-border transactions, subsoil users, and companies enjoying tax preferences or reporting tax losses must comply with the provisions of transfer pricing legislation in Kazakhstan.

Under the Transfer Pricing Law, a Kazakh party to a transaction subject to transfer pricing regulation must maintain documents substantiating the transaction prices. Transactions with certain commodities and services are subject to monitoring, and a Kazakh party to such transactions must report these transactions on an annual basis. The tax authorities have the right to request documents substantiating transfer prices, discounts provided or the method for the determination of transfer prices.

## Other business practices

### Tendering process for state companies

By law, Kazakh state companies are required to procure goods, services/work through tenders conducted by tender commissions. Thus, to supply goods, perform work or render services to a state company, a company, as a potential supplier, should submit an application to participate in the tender in a sealed envelope by a specified deadline. The deadline, place of submission and procedure for preparing a tender application are indicated in the tender documentation. A potential supplier cannot submit a tender application after the deadline for submitting documents.

Prior to participating in a tender, a potential supplier must meet certain general qualification requirements in accordance with Kazakh legislation. The law does not stipulate allocations between multiple potential suppliers. To the best of our knowledge, a potential supplier acts solely and independently, and only one supplier may be recognized as the winner of a tender.

A tender commission opens tender applications at the time and at the place specified in tender documentation. A potential supplier and/or its authorized representative may attend the opening of tender applications and may make audio or video recordings of the process. Not later than one day following the opening of tender applications, a tender commission must prepare a protocol on the opening of tender applications. Then, the tender commission reviews all tender applications for their compliance with tender documentation and identifies any suppliers who do not meet qualification requirements and consequently cannot be allowed to participate in the tender. The tender commission compares price quotes proposed by tender participants and determines the winner of the tender on the basis of the lowest price. Not more than two business days after the date of determination of the tender winner, the tender commission should prepare a protocol on the tender results which should be signed by the chairman, secretary and all other members of the tender commission.

### Use of stamps and seals

In general, Kazakh legislation does not require companies to verify their signatures on documents with corporate stamps. However, in practice most companies have their corporate stamps which they use for verification purposes.

In Kazakhstan the signature of concerned parties should normally be verified on the following documents:

- agreements together with all appendixes, orders and requests, additional agreements to the agreements, call-offs (if any);
- invoices;
- acts of acceptance of goods or services/work;
- business trip certificates, etc.

There is no requirement to stamp the above documents. Thus, if a party to an agreement is an individual who does not have a stamp, this should not prevent parties from signing and implementing the agreement.

### Original documents

Normally all documents prepared and referred to in Kazakhstan should be provided in original. Copies of documents provided by foreign companies can be accepted by the state authorities if the copies are properly notarized and apostilled. However, in general it depends on the purposes for which the documents are to be submitted.

## Taxation

The principal law that regulates taxation in Kazakhstan is the Tax Code, which was adopted in December 2008 to replace prior tax legislation. Drafted at the time when Kazakhstan was enjoying substantial tax revenues because of unusually-high global prices for hydrocarbons, metals, and minerals, the Tax Code sought to make the Kazakhstan fiscal regime more competitive and shift the tax burden from companies operating outside the natural resource sector to subsoil users. The Tax Code has therefore significantly reduced the corporate income tax rate and eliminated many tax privileges and exemptions. At the same time, the Tax Code removed subsoil contract stability for many subsoil use contracts while raising taxes on subsoil users.

While many taxpayers have benefited from the simplification of the tax regime and the reduction of corporate income tax rates, the expected additional revenues from subsoil users have failed to materialize due to the collapse of oil and commodity prices as a result of the global economic downturn of 2008 and resultant financial crisis. Kazakhstan's economy experienced considerable budgetary shortfalls over the ensuing years, which is only expected to reverse once natural resource prices recover to pre-crisis levels. It remains to be seen whether the government will be able to reduce the resultant fiscal deficit through a combination of more aggressive enforcement and tax collection efforts or whether it will be forced to increase taxes.

### Statute of limitations

The statute of limitations for tax liabilities and claims is a period of time, within which:

- the tax authorities have the right to assess or revise an assessed, calculated amount of taxes and other obligatory payments to the state budget;
- a taxpayer (tax agent) has the right to submit tax reports, introduce amendments and additions to tax reports, or revoke tax reports;
- a taxpayer (tax agent) has the right to request an offset and (or) refund of taxes and other obligatory payments from the state budget;
- the tax authorities should offset and (or) refund taxes and other obligatory payments from the state budget.

The statute of limitations for the tax liabilities and claims is five years.

## *Taxation of business entities in Kazakhstan*

Business entities in Kazakhstan (including branches and representative offices of foreign companies) are potentially subject to several taxes and fees, which include:

- Corporate income tax
- Value-added tax
- Excise tax
- Rent tax on exported crude oil, coal and gas condensate
- Subsoil use taxes
- Social tax
- Land tax
- Vehicle tax
- Property tax
- Miscellaneous fees and levies.

All these taxes have their own separate filing and reporting requirements and make record keeping somewhat time-consuming. The government is taking measures to simplify tax compliance, but these measures are yet to achieve their goals.

### *Corporate income tax*

Income tax is one of the principal taxes for Kazakhstan's legal entities and branch offices of foreign companies.

Representative offices can constitute a taxable presence and can face liabilities for income tax if they are not part of an entity that is resident in a country that has a tax treaty in place with Kazakhstan.

A company is deemed to be resident in Kazakhstan if it is established as a legal entity under the laws of Kazakhstan or has its principal place of management in Kazakhstan. Companies resident in Kazakhstan are subject to income taxation in Kazakhstan on their worldwide income. Companies not resident in Kazakhstan are subject to taxation in Kazakhstan only on their income from sources in Kazakhstan.

The corporate income tax rate payable by most legal entities is 20 percent of taxable income, certain types of income (e.g. interest, winnings) derived by a resident legal entity are taxable at the source of payment at a rate of 15 percent, and the net income of a foreign legal entity which has its place of business in Kazakhstan through a permanent establishment is taxed at 15 percent (a so-called branch profit tax). Various small companies may qualify for special tax regimes specifying lower tax rates.

The taxable income of a tax resident legal entity and a non-resident's Kazakh permanent establishment is measured as its gross worldwide income less its expenses connected with the generation of income. Net income of a branch of a foreign entity subject to the branch profit tax is computed as its gross income from Kazakh sources less its expenses connected with the generation of that income and less the amount of corporate income tax. Deductible expenses include wages and salaries, depreciation of fixed assets, non-capitalizable repair expenses, insurance premiums, taxes other than income taxes, and other expenses attributable to its income-generating activity. Interest expense,

entertainment expenses, and certain other expenses are deductible only within established limits.

In addition to deducting expenses, legal entities may carry forward and deduct operating losses and losses from certain types of fixed assets' retirement for up to ten years following the year when the operating loss arises. Losses cannot be carried back to prior years.

Kazakh resident taxpayers may claim a foreign tax credit, limited to the amount of tax due in Kazakhstan on the foreign-source income, for foreign taxes paid on foreign-source income.

## *Taxation of foreign companies' income*

The taxation of a foreign company's Kazakh-source income differs depending upon whether or not the foreign entity has a registered permanent establishment in Kazakhstan. If a foreign entity has a permanent establishment in Kazakhstan, it is subject to all applicable Kazakhstan taxes plus branch profit tax at the rate of 15 percent. Thus, the total effective income tax rate for foreign companies with a permanent establishment in Kazakhstan is 32 percent of taxable income.

A Kazakh permanent establishment of a foreign entity may deduct a portion of the general and administrative expenses that its foreign head office incurs only if an applicable tax treaty provides for such a deduction.

If a foreign entity does not have a registered permanent establishment in Kazakhstan, it is subject to income tax at the source of payment on its gross income from sources in Kazakhstan. The payer of the income is responsible for withholding and remitting the tax to the state by acting as a tax agent.

The rate of income tax withheld at source depends on the nature of the income paid to the nonresident. Income from providing services (other than insurance and international transportation services) is taxable at the rate of 20 percent. Dividends, royalties, interest income and capital gains are subject to tax at a rate of 15 percent. Income from international transportation services is taxable at 5 percent. Premiums paid for insurance coverage in Kazakhstan are subject to tax at 15 percent, while premiums for reinsurance are taxable at 5 percent.

Kazakhstan has signed a number of tax treaties that provide for reduced rates of income tax on passive income and exemption from corporate income tax on active business profits if companies do not have a permanent establishment in Kazakhstan. Many of these tax treaties also provide for a reduced rate of branch profit tax. Appendix 1 contains a table showing the income tax withholding rates for dividends, interest and royalties under Kazakhstan's various tax treaties.

The treaty exemption is nearly automatic in Kazakhstan. To claim treaty relief for income received from Kazakhstan, a nonresident company must obtain a certificate confirming its tax residency in the treaty-partner country and provide it to the Kazakh counterparty paying the taxable income. To be valid in Kazakhstan, the residency certificate must be duly legalized (or apostilled), translated into Russian or Kazakh and notarized by a local notary in Kazakhstan.

### ***Filing and payment requirements***

Advance payments of corporate income tax are due monthly. Taxpayers must submit an annual corporate income tax declaration by no later than 31 March of the year following the reporting year. Taxpayers must remit any outstanding tax liabilities within ten calendar days following the submission of their annual tax declaration.

#### ***Value-Added Tax***

Registration as a VAT payer is required for all individuals and companies that conduct business activities in Kazakhstan and have cumulative taxable revenues in excess of 30,000 monthly index factors (approximately USD 342,000) during a calendar year. VAT registration is optional for all other persons. Registered VAT payers must charge VAT on their taxable output and may claim a credit for input VAT they pay to suppliers that are registered VAT payers in Kazakhstan.

The standard VAT rate is 12 percent and applies to revenues derived from the sale of goods or services within Kazakhstan and to the importation of goods into Kazakhstan. Tax law provides special rules for determining when and where various types of transactions are deemed to occur.

Certain activities are specifically exempt from VAT. The list of exempt activities includes, among others, sale and lease of land and land use rights (except for land used for parking passenger vehicles), financial services, insurance services, and medical services.

Kazakhstan VAT payers are required to charge themselves VAT on taxable transactions they conduct in Kazakhstan with nonresidents that are not VAT payers in Kazakhstan. Taxpayers may claim a credit for this self-charged VAT. The amount due to the state is the difference between the total amount of output VAT that a taxpayer charges during the tax period and the total amount of creditable input and/or import VAT that the taxpayer pays during the tax period.

The VAT base for imported goods includes the declared customs value of the goods and any excise duties, customs duties, and customs clearance fees paid on the goods. Importers must pay import VAT before goods clear customs. VAT exemptions at the time of import are available for pharmaceuticals and medical equipment in accordance with an approved list.

Zero-percent VAT applies to exports of goods from Kazakhstan and to international transport services.

#### ***Excise tax***

Certain items imported into or produced in Kazakhstan are subject to excise tax. These goods include, among others, all kinds of alcohol spirits and beverages, tobacco products, petrol (except for aviation fuel), diesel fuel, motor vehicles, crude oil, gas condensate, and medical products containing spirits.

Excise tax applies to the quantity of goods produced in or imported into Kazakhstan, depending on the type of good. With respect to vehicles, the excise tax applies to the total engine volume of a vehicle whose engine volume exceeds 3,000 cubic cm.

#### ***Rent tax on exports of crude oil, coal and gas condensate***

Individuals and legal entities exporting crude oil, coal and gas condensate, other than subsoil users operating under a production sharing agreement which was concluded before 1 January 2009 and which has undergone a mandatory tax review or is a subsoil use contract approved by the President of Kazakhstan, are subject to a special tax on exports of crude oil and gas condensate. The tax rate ranges from 0 to 32 percent of the government-determined market value of the exported crude oil or gas condensate. The tax rate for the export of coal is a flat 2.1 percent.

#### ***Subsoil use taxes***

Starting 1 January 2009, subsoil users may no longer conclude new production sharing agreements with the Kazakh Government, although they may continue to operate under a production sharing agreement which was concluded with the Government of Kazakhstan prior to that date.

The Tax Code also abolished the stability of the tax regime for subsoil use contracts other than production sharing agreements concluded with the Government of Kazakhstan before 2009 which have undergone a mandatory tax review and are subsoil use contracts approved by the President of Kazakhstan. Other subsoil use contracts, including those concluded before 2009, are not stabilized with respect to their tax regimes, and subsoil users operating under such contracts are subject to taxation in accordance with the tax law in effect at the time when a particular tax liability arises.

In accordance with the Tax Code, subsoil use taxes include special subsoil use payments (subscription and commercial discovery bonuses and reimbursement of historical expenses), the mineral extraction tax, and the excess profit tax. These taxes apply in addition to the other taxes and obligatory payments stipulated by Kazakhstan tax legislation. By contrast, subsoil users operating under qualifying production sharing agreements concluded with the Government of Kazakhstan before 2009 continue to operate under the tax regime established in their subsoil use contracts until the expiration date of that contract.

#### ***Land tax***

Entities that own or use a land parcel are required to pay a land tax. The tax rate depends on the quality score assigned to the land by the governmental authorities and is established in the form of annual fixed payments per unit of land area.

### **Vehicle tax**

Entities that own or use vehicles registered in Kazakhstan are subject to an annual vehicle tax. The tax rate depends on the vehicle's engine volume and the type of vehicle.

### **Property tax**

Entities owning or using buildings, structures, dwellings, premises and other structures firmly fixed on the ground must pay property tax on such assets. The property tax rate payable by most legal entities in Kazakhstan is 1.5 percent of the average annual book value of the taxable assets.

Property tax applies regardless of whether profit is derived from the use of the assets.

### **Miscellaneous fees and levies**

Various other fees and levies may apply to certain types of activity in Kazakhstan. For example, there are fees for the use of wildlife, forestry fees, fees to register real estate transactions, environmental pollution charges, levies for the use of the radio frequency spectrum, and stamp duties for any number of administrative functions performed by governmental bodies and licensed notaries. In addition, companies may need to pay a license fee for the right to engage in certain specified types of activity.

## **Taxation of individuals in Kazakhstan**

### **Tax residency**

Personal taxation in Kazakhstan depends on an individual's tax residency status. Foreign individuals are regarded as tax residents of Kazakhstan if they spend 183 days or more in Kazakhstan in any consecutive 12-month period which ends in current tax period. Foreign individuals who are present in Kazakhstan less than the stipulated number of days are regarded as tax nonresidents.

Tax residents are subject to income tax in Kazakhstan on their worldwide income. Nonresidents are subject to income tax in Kazakhstan only on their Kazakh-source income.

### **Taxable income**

A nonresident's Kazakh-source income with respect to employment income includes all income, whether received in cash or in kind, for work performed in Kazakhstan, regardless of where the income is paid or who pays the income. As a rule, all types of compensation and benefits that an employee receives for employment services constitute taxable income. Certain types of non-employment income are exempt from personal income tax. Tax deductions are minimal, except for the obligatory pension fund contributions that local national employees must make on a monthly basis. The Tax Code exempts from taxation employment income, except for employment income received in kind and employment income in the form of material benefit, that nonresident individuals receive from work in Kazakhstan if their employer is a foreign entity that does not have a permanent establishment in Kazakhstan provided that the nonresident individual spends less than 183 days in a 12-month period in Kazakhstan.

### **Tax rates**

The standard personal income tax rate is a flat ten percent for both resident and nonresident employees. In 2014-2017 Kazakhstan plans to gradually re-introduce progressive personal income tax rates.

Dividend income of tax resident individuals is subject to income tax withholding at a rate of five percent. With regards to nonresident individuals, their Kazakh-source income other than employment income is taxable at rates ranging from five to 20 percent.

### **Tax payment and reporting mechanism**

Kazakh legal entities and representative offices and branches of foreign legal entities registered in Kazakhstan must withhold personal income tax from all payments they make to employees and secondees, remit the tax, and report these taxes on their payroll tax reports. Nonresident individuals in Kazakhstan must register for tax purposes in Kazakhstan and file annual personal income tax declarations if they have Kazakh-source income that is not taxed at the source of payment in Kazakhstan.

By 2017 it is planned to introduce individual income tax reporting and payment. At present, only certain categories of individuals are subject to individual income tax reporting and payment.

Foreign nationals who are tax residents of Kazakhstan are required to file a tax declaration by 31 March following the reporting year if they receive any Kazakh or foreign-source income from which income tax was not withheld at source in Kazakhstan or if they have a foreign bank account. Any final tax payment is due by 10 April of the year following the reporting year.

There is no joint filing status in Kazakhstan. Instead, each spouse earning income must file a separate tax return.

### **Foreign tax credit**

Kazakh resident taxpayers can receive credit in Kazakhstan for the amount of income tax paid in foreign jurisdictions on income derived from foreign sources. The credit cannot exceed the amount of tax that would have been payable in Kazakhstan on the same income. Income pooling is not allowed, and taxpayers must compute foreign tax credits for each foreign tax jurisdiction separately.

### **Treaty claims procedure**

A nonresident individual's income may be exempt from income tax in Kazakhstan under an applicable tax treaty. If the income is subject to income tax at the source of payment in Kazakhstan, the individual can claim treaty relief by providing the employer in Kazakhstan with a certificate confirming his or her tax residency in a country that has a tax treaty with Kazakhstan. The employer is responsible for ensuring that the individual meets the conditions to qualify for treaty relief.

## Social security, social tax and obligatory pension contributions

### Social security contributions

Employers in Kazakhstan must make contributions to the State Social Security Fund. Contributions are required for local employees as well as for expatriate personnel who have a permit for permanent residence in Kazakhstan. A foreign national without a permanent residence permit is not subject to this contribution requirement.

Contributions are computed at the rate of five percent of monthly gross salary up to a maximum monthly income of 10-times minimum monthly salary (KZT 18,660) (approximately USD 1,230). Therefore, the maximum contribution amount is approximately USD 62 per individual per month at the present rate of exchange.

### Social tax

Employers in Kazakhstan, including foreign employers operating in Kazakhstan through a branch or representative office, must pay social tax for their local and expatriate employees and secondees. Social tax is levied at a flat rate of 11 percent on the gross income of employees, including all fringe benefits, whether received in cash or in kind. There is no maximum threshold for the social tax base. The tax is borne entirely by the employer, and no part is withheld from employee salaries.

### Obligatory pension contributions

Kazakh nationals must pay ten percent of their gross income as obligatory contributions to a pension fund of their choice in Kazakhstan. The gross monthly income amount subject to obligatory pension contributions is capped at approximately 75-times minimum monthly salary (hence, the maximum amount of mandatory pension contribution is USD 855 per month at the present rate of exchange). Employers of Kazakh nationals must withhold the pension contributions from the amounts due to the individuals and remit these amounts to the relevant pension fund. Foreign nationals who do not have a permanent residence permit in Kazakhstan are not required to join Kazakh pension plans.

## Protection of taxpayer rights

Overall, Kazakhstan's tax legislation establishes a relatively well functioning and straightforward tax collection mechanism. The legislators, however, have paid little attention to the protection of taxpayer rights. Although the Tax Code provides that a principal obligation of the tax authorities is to observe taxpayer rights, these rights are narrow in scope and largely declarative. Businesses often complain of frequent inspections by tax authorities and other officials, even though such inspections are limited in number and scope under Kazakhstan legislation. Although the government is taking steps to rein in inspections by overzealous officials, Kazakhstan's tax system continues to suffer from excessive bureaucracy, and more progress is needed for the tax collection system to provide adequate safeguards for taxpayer rights.

## Customs

Kazakhstan is a member state of the Customs Union with Russia and Belarus. The Customs Union is the first step in the creation of a Single Economic Space between the member states and is designed to provide for free movement of goods between the member states of the Customs Union and to eliminate customs duties and non-tariff barriers between the member states.

The formation of the Customs Union has resulted in the following:

- the establishment of a unified customs territory encompassing the three member states, within which no national customs duties or economic restrictions apply except for special protection, anti-dumping, or compensatory measures;
- goods manufactured or released for free circulation in the territory of any of the participating countries (hereinafter, "Customs Union Goods") circulate within the territory of the Customs Union (a) without the payment of customs duties; (b) free of any economic limitations; and (c) with simplified customs formalities (requiring only documents confirming the status of goods as Customs Union Goods);
- the use of uniform regulations for principal customs-related issues, including: (a) the rights and duties of the customs authorities and participants in foreign economic activities; (b) uniform customs procedures; (c) uniform rules for classification, customs valuation, and determination of the country of the origin of goods; and (d) uniform procedural rules (procedures and forms for declaring and releasing goods, payment of customs duties, etc.);
- the use of uniform customs tariff regulations (including, among others, a common commodity classification nomenclature and a customs tariff); and
- the use of uniform non-tariff regulations (including, among others, unified rules applicable to licensing, export supervision, and quantitative restrictions).

### Customs duties

Import customs duty rates are established by the decision of the Customs Union Customs Commission on the Unified Customs Tariff of the Customs Union, while export customs duty rates are set by the Government of the Republic of Kazakhstan.

Most customs duties vary between 0 percent and 20 percent and are imposed on the transaction value of the imported goods (the price of the goods plus all associated costs, such as transportation). A customs processing fee in the amount of 60 Euros for the first page of a customs declaration and 25 Euros per additional page also applies.

The Customs Code stipulates certain tariff privileges which allow importers of goods originating in and imported from certain countries, as well as certain classes of investors, to import goods and property duty-free or at reduced duty rates established by the Commission of the Customs Union.

Certain goods imported into the Customs Union and originating from other Free Trade Zone member states and certain goods exported from the Customs Union to other Free Trade Zone member states and originating from Kazakhstan may be imported duty-free. The Free Trade Zone member states are Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Uzbekistan, Ukraine and Georgia.

Goods originating from developing countries can be imported into the Customs Union at reduced rates. In addition, goods originating from least developed states may be imported duty-free.

Customs duties may also be reduced or waived for contracts entered into with state authorities for investment in priority sectors of the economy. Additional benefits may be provided under international agreements and treaties to which Kazakhstan is a party.

## Accounting standards and audit requirements

### *Accounting standards*

All large entities and public companies in Kazakhstan are required to adopt International Financial Reporting Standards (IFRS) in the preparation and compilation of their annual reports. Small and medium-size enterprises and branches and representative offices of foreign entities may follow either national financial reporting standards or IFRS.

### *Audit requirements*

In accordance with the Law on Audit Activity, the following Kazakhstan entities are subject to a mandatory audit:

- JSCs;
- insurance and reinsurance companies and insurance brokers;
- major shareholders<sup>22</sup> of insurance and reinsurance companies and legal entities in which insurance and reinsurance companies have a significant ownership interest;<sup>23</sup>
- accumulative pension funds and pension asset investment management companies;
- major shareholders of open accumulative pension funds and legal entities in which an open accumulative pension fund has a significant ownership interest;
- subsoil users;
- banks, bank holding companies and legal entities in which a bank and/or a bank holding company is a major shareholder;
- natural monopolies;
- entities working in the field of civil aviation, other than airlines exempted by the Kazakhstan Government from the mandatory audit requirement;
- enterprises engaged in grain collection activities;
- the insurance compensation guarantee fund;
- Kazakh legal entities have signed an investment contract with the government of Kazakhstan;
- cotton-processing organizations.
- Other legal entities may elect to be audited on a voluntary basis but are not subject to an audit requirement.

## Development zones

Special economic zones have been established in Kazakhstan in order to facilitate the development and support of the national economy by creating favorable tax and legal conditions for business and to attract new investors.

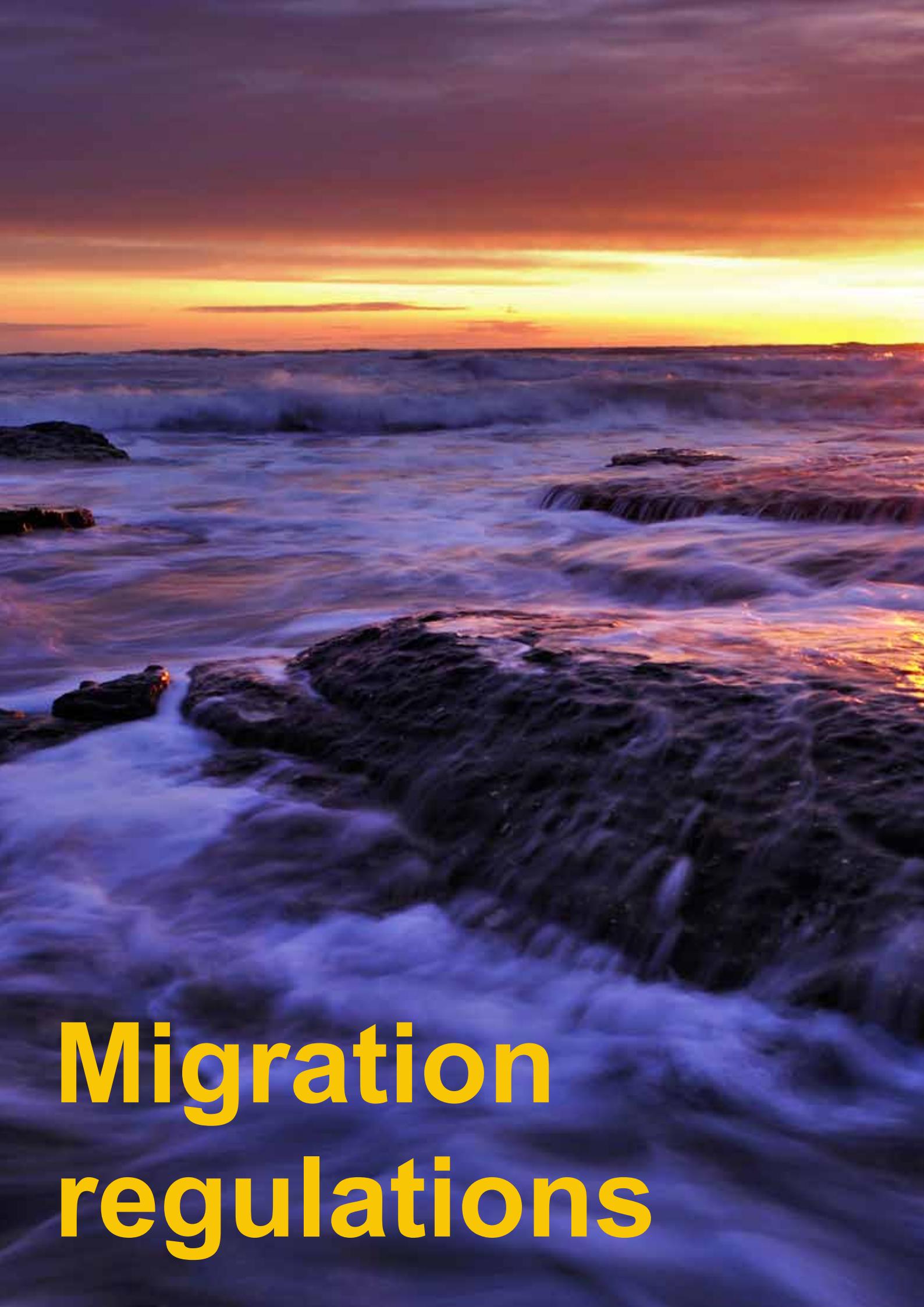
Only a limited number of legal entities can operate in the special economic zones where certain restrictions apply. There is also the list of legal entities are not permitted to operate within a special economic zone, e.g. operating in the gambling industry.

The main advantage of special economic zones is that companies operating in these zones are exempt from corporate income tax, property tax and land tax. Sales of goods within a special economic zone are subject to VAT at a rate of zero percent if such goods are included on a list approved by the Kazakh government and used to perform priority operations serving the purpose for which the special economic zone is created. Legal entities operating within the Information Technology Park special economic zone are entitled to a 100 percent exemption from social tax for their employees.

Since 2011, legal entities operating within special economic zones are entitled to attract foreign employees without seeking alternative candidates on the domestic labor market.

<sup>22</sup> Under Kazakh legislation, legal entities and individuals which obtain a written approval from the FSA to own directly or indirectly 10 percent or more of the voting shares of a financial institution are regarded as major shareholders of that institution.

<sup>23</sup> Under Kazakh legislation, any person or entity which owns directly or indirectly, individually or acting in a coordinated manner jointly with one or more persons, 20 percent or more of the voting shares or ownership stakes of a legal entity or has the right to vote 20 percent or more of the shares is deemed to possess a significant ownership interest in that entity.

A wide-angle photograph of a coastal scene at sunset. The sky is filled with horizontal bands of orange, yellow, and deep blue. The ocean in the foreground is dark blue, with white-capped waves crashing against several dark, jagged rocks. The overall atmosphere is serene and dramatic.

# Migration regulations

### *Visa requirements*

A foreign national who is going to do business in Kazakhstan shall consider Kazakhstan's migration regulations.

When preparing for a journey to Kazakhstan, a foreign national, if not exempt from the visa requirements, should apply abroad to a Kazakhstan consulate or embassy for an appropriate type of Kazakh visa. The simplified procedure for obtaining Kazakh visas applies to the nationals of most North American and Western European countries.

The following is a partial listing of Kazakh visas classifications:

- investors' visas (ИНВ) are granted to the general managers and top executives of foreign entities involved in the investment activity in Kazakhstan, participants of the Regional Financial Center of Almaty and their families. This type of visa can be issued for single, double, triple, or multiple entries to the country.
- business visas (ICB) are granted to foreign nationals residing in foreign countries who are visiting Kazakhstan temporarily for business purposes. This type of visa can be issued for single, double, triple, or multiple entries to the country.
- all foreign nationals must register at the offices of the migration police within five working days after their arrival to Kazakhstan, except for those who were registered upon arrival at the airport and Russian citizens who are allowed to stay in Kazakhstan for 30 calendar days without registering with the migration authorities. Failure to do so can result in fines and deportation from the country.

# KPMG in Kazakhstan



## About us

KPMG's global experience is complemented by the skills of local professionals, an invaluable asset for any client operating in or considering a move into a new and unfamiliar market. Our teams can offer realistic but internationally strategic sophisticated recommendations in line with local market conditions.

- KPMG is the global network of professional services firms of KPMG International. Our member firms provide audit, tax and advisory services through industry-focused and talented professionals who deliver value for the benefit of their clients and communities. KPMG member firms provide audit, tax, and advisory services from 153 countries.
- KPMG mobilized its resources in Kazakhstan and other CIS countries by opening offices in Almaty, Astana, Atyrau, Moscow, Saint-Petersburg, Ekaterinburg, Kazan, Krasnoyarsk, Nizhny Novgorod, Novosibirsk, Rostov-on-Don, Bishkek, Kiev, Donetsk, Lviv, Tbilisi, Yerevan and Baku. These offices offer a full range of globally provided services adapted to satisfy the requirements of both local companies and foreign investors.
- KPMG began its operations in Kazakhstan in 1996. In 2005 the first regional KPMG office in Kazakhstan was opened in Astana, which has grown from strength to strength. In December 2006 KPMG was transformed into two companies: KPMG Audit and KPMG Tax and Advisory. In October 2010 the second regional KPMG office in Kazakhstan was opened in Atyrau. In 2011 the third KPMG company was established in Kazakhstan, KPMG Valuation.
- Our team of professionals in Kazakhstan includes more than 350 foreign and local specialists and partners. Highly qualified specialists from other countries draw from their vast international experience to work with local national professionals (making up the majority of our personnel) to deliver relevant, comprehensive and quality advice.

## How KPMG can help?

Any foreign company which plans to invest in Kazakhstan needs to establish an entity to fully perform its activities and take all possible benefits from working in Kazakhstan.

We have significant practical experience in founding new companies in Kazakhstan. Our registration services mentioned above will include:

- supplying a description of the registration process, a list of all documents required for the registration process, and a discussion of how documents must be processed
- drafting template registration documents
- arranging for translation and notarization of documents in Kazakhstan
- preparation of a registration application and submission of the registration application and accompanying documents to the relevant state authority
- obtaining the various registration certificates
- obtaining a stamp and opening a bank account for the newly established company.

Our tax advisory services are aimed at identifying non-aggressive tax planning opportunities and leveraging them to our clients' best advantage – in the form of significant tax savings.

We advise on both corporate and personal taxation, and the scope of our services can range from advice on tax aspects of a particular transaction to a complex tax analysis of a company's entire operational structure, based on the recognition of a taxpayer's right to use all permissible means and methods to reduce its overall tax burden.

When providing legal advisory in the area of civil, currency, banking, customs and labor legislation, KPMG legal consultants work in close cooperation with our tax advisors and auditors to provide effective legal assistance with transactions, investments and other issues related to our clients' business in Kazakhstan.

## Thought leadership

Our knowledge base of articles and publications, which is available on our website, offers thought leadership and analysis across a spectrum of issues and challenges faced by businesses worldwide.

# Appendices



## Useful links

Invest in Kazakhstan  
<http://invest.gov.kz/>

Investment Fund of Kazakhstan  
<http://www.ifk.kz/>

National Export and Investment Agency KAZNEX INVEST  
<http://kaznexitest.kz/en/>

Government of the Republic of Kazakhstan  
<http://en.government.kz/>

Ministry of Finance  
[http://www.minfin.gov.kz/irj/portal/anonymous?guest\\_user=english](http://www.minfin.gov.kz/irj/portal/anonymous?guest_user=english)

Tax Committee  
<http://www.salyk.kz/eng/Pages/default2.aspx>

Ministry of Industry and New Technologies  
<http://www.mint.gov.kz/index.php?lang=en>

Ministry of Foreign Affairs  
<http://portal.mfa.kz/portal/page/portal/mfa/en/content/news/nws2012>

Ministry of Agriculture  
<http://www.minagri.kz/index.php?&lang=en>

Ministry of Transport and Communications  
<http://mtc.gov.kz/index.php?lang=en>

Ministry of Labor and Social Protection  
<http://www.enbek.gov.kz/en/>

Ministry of Economic Development and Trade  
<http://www.minplan.kz/en/>

Ministry of Oil and Gas  
<http://mgm.gov.kz/index.php?lang=en>

Ministry of Justice  
<http://www.minjust.kz/en>

Agency on Regulation of Natural Monopolies  
<http://www.regulator.kz/?lng=eng>

Agency on Fighting with Economic and Corruption Crimes  
<http://www.finpol.kz/eng/>

Agency on Statistics  
<http://www.eng.stat.kz/Pages/default.aspx>

The National Bank of the Republic of Kazakhstan  
<http://www.nationalbank.kz/>

Kazakhstan Stock Exchange  
<http://www.kase.kz/en>

CIA World Fact Book Kazakhstan  
<https://www.cia.gov/library/publications/the-world-factbook/geos/kz.html>

The Foreign Investors' Council  
<http://www.fic.kz/content.asp?parent=30&lng=en&mid=30>

American Chamber of Commerce in Kazakhstan  
<http://www.amcham.kz/>

Doing Business Project – Kazakhstan  
<http://www.doingbusiness.org/data/exploreeconomies/kazakhstan/>

## Current Kazakhstan treaties

Country	Dividends*	Interest	Royalty	Concessionary tax regime
<b>Austria</b>	5% (10%)	10%	10%	no
<b>Armenia</b>	10%	10%	10%	no
<b>Azerbaijan</b>	10%	10%	10%	no
<b>Belarus</b>	15%	10%	15%	no
<b>Belgium</b>	5% (10%)	10%	10%	no
<b>Bulgaria</b>	10%	10%	10%	no
<b>Canada</b>	5% (10%)	10%	10%	no
<b>China</b>	10%	10%	10%	yes (partially)
<b>Czech Republic</b>	10%	10%	10%	no
<b>Estonia</b>	5% (25%)	10%	15%	no
<b>Finland</b>	5% (10%)	10%	10%	no
<b>France</b>	5% (10%)	10%	10%	yes (partially)
<b>Georgia</b>	15%	10%	10%	no
<b>Germany</b>	5% (25%)	10%	10%	no
<b>Hungary</b>	5% (25%)	10%	10%	no
<b>India</b>	10%	10%	10%	no
<b>Iran</b>	5% (20%)	10%	10%	no
<b>Italy</b>	5% (10%)	10%	10%	no
<b>Japan</b>	5% (10%)	10%	10%	no
<b>Korea</b>	5% (10%)	10%	10%	no
<b>Kyrgyzstan</b>	10%	10%	10%	no
<b>Latvia</b>	5% (25%)	10%	10%	no

## Current Kazakhstan treaties (continuation)

Country	Dividends*	Interest	Royalty	Concessionary tax regime
<b>Lithuania</b>	5% (25%)	10%	10%	no
<b>Malaysia</b>	10%	10%	10%	yes (partially)
<b>Moldova</b>	10% (25%)	10%	10%	no
<b>Mongolia</b>	10%	10%	10%	no
<b>Netherlands</b>	5% (10%)	10%	10%	yes (partially)
<b>Norway</b>	5% (10%)	10%	10%	no
<b>Pakistan</b>	12.5% (10%)	12.5%	15%	no
<b>Poland</b>	10% (20%)	10%	10%	no
<b>Romania</b>	10%	10%	10%	no
<b>Russia</b>	10%	10%	10%	no
<b>Singapore</b>	5% (25%)	10%	10%	yes
<b>Slovakia</b>	10% (30%)	10%	10%	no
<b>Spain</b>	5% (10%)	10%	10%	yes (partially)
<b>Sweden</b>	5% (10%)	10%	10%	no
<b>Switzerland</b>	5% (10%)	10%	10%	no
<b>Tajikistan</b>	10% (30%)	10%	10%	no
<b>Turkey</b>	10%	10%	10%	no
<b>Turkmenistan</b>	10%	10%	10%	no
<b>UK</b>	5% (10%)	10%	10%	yes (partially)
<b>Ukraine</b>	5% (25%)	10%	10%	no
<b>USA</b>	5% (10%)	10%	10%	yes (partially)
<b>Uzbekistan</b>	10%	10%	10%	no

\* The number in parentheses indicates the minimum share of capital (in percentage terms) that a beneficial owner must possess to qualify for the reduced tax rate, if the treaty specifies a minimum ownership requirement. Under some treaties, a nonresident may qualify for 0 percent tax on dividends if it meets other requirements in addition to the minimum ownership requirement.

## Contact us

### **Gregor Mowat**

Managing Partner  
Kazakhstan and Central Asia  
*E: gmowat@kpmg.kz*

### **Ashley Clarke**

Head of Audit  
*E: arclarke@kpmg.kz*

### **John Lourenco**

Head of Tax and Legal  
*E: johnlourenco@kpmg.kz*

### **Vyacheslav Jaravine**

Head of Transactions  
and Restructuring  
*E: vjaravine@kpmg.kz*

### **Vitaly Chaikin**

Head of Risk Consulting  
*E: vchaikin@kpmg.kz*

### **Asel Khairova**

Head of the Astana office  
*E: akhairova@kpmg.kz*

### **Sholpan Assangaliyeva**

Head of the Atyrau office  
*E: sassangaliyeva@kpmg.kz*

### **Almaty office**

180 Dostyk Avenue  
Almaty 050051  
**T:** + 7 (727) 298 08 98  
**F:** + 7 (727) 298 07 08

### **Astana office**

Samal 12  
Astana 010000  
**T:** +7 (7172) 55 28 88  
**F:** +7 (7172) 55 28 00

### **Atyrau office**

34A Satpayev Street  
Atyrau 060011  
**T:** + 7 (7122) 55 62 00  
**F:** + 7 (7122) 55 62 02

[www.kpmg.kz](http://www.kpmg.kz)

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2013 KPMG Audit LLC, KPMG Tax and Advisory LLC and KPMG Valuation LLC, companies incorporated under the Republic of Kazakhstan, subsidiaries of KPMG Europe LLP, and member firms of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in Kazakhstan.

The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International.