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INCLUDING A SPECIAL FOCUS ON  
ONE BELT ONE ROAD CHINA INVESTMENT  
内含特刊关注中国的一带一路投资

**LexisNexis® Mergers &  
Acquisitions Law Guide 2018  
并购法律指南 2018**

## Jurisdiction: Kazakhstan

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### Kazakhstan: the buckle in “belt and road”

Kazakhstan has high ambitions in the China’s Belt and Road initiative, as it is geographically an ideal junction between China and the West and its interest in the Belt and Road is indisputable, with the Kazakh government already involved in Nurlı Zhol (the Path of Light), a USD 9 billion domestic economic stimulus plan to develop and modernize roads, railways, etc.

Kazakhstan’s economy has been suffering from oil price declines since late 2013 and its future economic growth, therefore, depends on the development of infrastructure and regional trade. The country aims to become the largest business and transit hub of the Central Asia region, a bridge between Europe and Asia. It considers China’s Belt and Road initiative as a means to this end.

Kazakhstan is important for the energy security of China. Its oil, gas, coal and uranium reserves are among the 10 largest in the world, and it has a strategic geographical location to control oil and gas flows from Central Asia to the East and the West. Its geographical proximity, the safety of transportation routes and the absence of any hostile rivals in the region are the main advantages of Kazakh energy for China. That is why, even years before President Xi Jinping’s official declaration of the Silk Road Economic Belt initiative in 2013 in Astana, China had already begun to invest heavily in oil & gas infrastructure in Kazakhstan.

As of end of 2014 from 27 billion USD of Chinese foreign direct investment (FDI) in the CIS, 23.6 billion USD have been made in Kazakhstan,

whereas Russia received only 3.4 billion USD, that is seven times less.

One of the major Chinese investments so far in Kazakhstan is the Kazakhstan–China Oil Pipeline project, which is China’s first direct oil import pipeline allowing oil import from Central Asia. It runs from Kazakhstan’s Caspian shore to Xinjiang in China. The pipeline is owned by the China National Petroleum Corporation (CNPC) and the Kazakh oil company KazMunayGas. At the end of 2015, oil transportation through the Atassu–Alashankou pipeline in the direction of China constituted 11.8 million tons of oil.

Another important pipeline for China’s energy security project is the 3,666km Central Asia –China Gas Pipeline, that forms the backbone of infrastructure connections between Turkmenistan and China. Chinese-built, it runs from the Turkmenistan/Uzbekistan border through Kazakhstan to Jingbian in China and cost USD7.3 billion.

### Potential problems

There may be some roadblocks for Chinese FDI in Kazakhstan. A Chinese investor planning an investment project in Kazakhstan, as in any other emerging nation, may have to face an unsettled legal and regulatory environment, and uncertainty about the continuity of existing laws and enforceability of contracts. Uncertainty regarding enforceability of international arbitration clauses in disputes with quasi-sovereign entities and/or state bodies because of the recently adopted Arbitration Law, in particular, poses particular risks to foreign investors.

Major Chinese energy investments made in Kazakhstan so far, therefore, can be distinguished by specific approaches that Chinese investors have taken in terms of obtaining additional legal protections in one form or another, which otherwise are not provided for in the general law. For instance, just to make the China Oil Pipeline and the Central Asia China Gas Pipeline projects bankable, unprecedented international treaties between Kazakhstan and the PRC have been signed and ratified by the Kazakh parliament, which created specific legal frameworks for these particular two projects and which prevail over any conflicting Kazakhstan legislation.

The author believes, however, that such a unique foreign investment model could prove problematic and not acceptable for Kazakhstan if expanded for implementation of all future investments under the Belt and Road initiative.

China already controls up to 30% of the oil industry of Kazakhstan. Since 2000, Kazakhstan has moved from being fully dependent on Russia for oil and gas exports towards more diversification, but now there are concerns that Kazakhstan has become dangerously dependent on China. To address this, Kazakhstan has developed legal tools to be able to prevent further expansion of Chinese, Russian or any other country's control in its energy sector, if needed, including the state's priority right to purchase/permission to transfer so-called "strategic assets" and the state's priority right to purchase/permission to transfer in the area of subsoil use. This may be an obstacle for some energy projects initiated by China under the Belt and Road initiative.

#### Focus on Kazakhstan

Kazakhstan has climbed the World Bank's Ease of Doing Business index and is now ranked 35th. The World Bank also ranks it as one of the 20 most attractive countries in the world for investors. With the intention of promoting industrialization and diversification of its

economy, the law in Kazakhstan provides a system of benefits and preferences – for example, tax and customs duties exemptions and even compensation by the government of up to 30% of the costs relating to construction, assembly and acquisition of equipment – that supports direct investments in certain areas, including transportation, infrastructure, agriculture, manufacture of refined petroleum products, as well as the generation of electric power.

In 2013, feed-in tariffs and guaranteed off-take have been introduced to facilitate development of renewable energy projects, and in 2015 the PPP Law was adopted, which provides a good legal framework for public-private partnership (PPP) projects in any sector of economy.

Chinese FDI under the Belt and Road initiative, therefore, must be implemented in Kazakhstan under the general legislation framework, which is already very investor-friendly.

#### Seizing opportunities

Kazakhstan needs to think of alternates for growth by diversifying and innovating itself instead of relying solely on natural resources. The Belt and Road initiative provides a unique opportunity for Kazakhstan to attract Chinese money and technologies, become one of the largest transit hubs in Eurasia, and to venture into exports of organic foods to China.

Kazakhstan has a good legal system for attracting FDI and with its massive privatization programme, the nation aims to reduce the presence of the state in the economy to 15% by 2021. Multiple IPOs, in particular, are scheduled for next few years on a stock exchange of the so-called Astana International Financial Centre (hereinafter the "AIFC"), a new financial center to be based on English law and that would have a number of unprecedented privileges for participants, such as exemption from taxes for 50 years, free movement of capital, modern infrastructure, free office lease for 2 years and a special visa regime for foreigners. AIFC is scheduled to start working from 2018.



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markets, infrastructure transactions, and workouts and restructurings in many industries. Prior to joining GRATA International, he worked as an Associate in the Almaty office of Dewey & LeBoeuf and in-house counsel in the London office of the European Bank for Reconstruction and Development. Shaimerden has extensive knowledge of infrastructure regulation and experience in reforming tariff systems, power, utilities and natural monopolies regulation, as well as drafting laws and orders in Kazakhstan, agreeing legislative amendments and new laws among various stakeholders and approving them at various levels in the Government of Kazakhstan.

Shaimerden received his LL.M. from the Duke University School of Law (USA), his specialist degree (JD equivalent) in Law from the Eurasian National University Faculty of Law (Kazakhstan) and completed non-degree course of studies for foreign diplomats in the China Foreign Affairs University (PRC).

Therefore, Kazakhstan has a chance to become the best country within the Belt and Road initiative for Chinese companies to invest in, and the door for China to the Eurasian Economic Union, a single market of 183 million people.

### **Structure of the law**

Kazakhstan's legal system (save for the AIFC as discussed above) is a civil law system similar to the systems in most other former Soviet jurisdictions. Its regulation is established by the Constitution, various codes, laws, edicts, decrees (having the force of law), regulations, instructions, orders and other normative acts of Kazakhstan.

### **Dispute resolution**

The Kazakhstani court system consists of three levels: the Supreme Court of Kazakhstan; local regional courts and courts with equivalent regional court status (e.g, the Almaty City Court, Astana City Court) and local city and district courts. Also, in 2015, investment panels were established in Astana City Court and the Supreme Court for resolution of disputes involving investors. Finally, it also worth mentioning, that special AIFC's court is expected to start operating from 2018, which would resolve (i) disputes between the center's participants (companies registered on the AIFC territory), (ii) disputes about transactions conducted in the AIFC and on the basis of AIFC law and (iii)

disputes referred to the AIFC's court by the parties concerned. The AIFC's court will consider disputes on the basis of English procedural law. The judgments issued by this AIFC's court will be directly enforceable in Kazakhstan.

Kazakhstan courts will not generally enforce judgments of foreign courts unless Kazakhstan has a treaty with the relevant foreign country on mutual recognition and enforcement of judgments. Kazakhstan has such treaties only with few countries, namely, the CIS countries, Turkey and China. However, there is no such treaty, for instance, between Kazakhstan and UK, the US, Ireland or any other Western country. Accordingly, judgments of courts in Western countries generally will not be enforceable in Kazakhstan. Thus, it generally is not recommended to submit disputes to English courts, unless the Kazakhstani counterparty has material assets outside Kazakhstan against which an English court judgment may be enforced.

Foreign arbitral awards, however, are generally enforceable in Kazakhstan as a matter of law. Kazakhstan is a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and, if a foreign arbitral award is obtained in another member country, such award should generally be enforced by Kazakhstani courts without a review of the merits, subject to compliance with qualifications set out in the Convention and certain procedural rules of Kazakhstani law. Please note, however, that in practice the enforcement of foreign arbitral awards in Kazakhstan can be difficult.

### Legal presence in Kazakhstan

To create a legal presence in Kazakhstan, foreign investors may either establish a branch/representative office or establish a Kazakhstani legal entity. There are two major legal entity types of commercial organizations that are most frequently used for business in Kazakhstan due to convenient governance structure and liability limitation that is normally sought by

shareholders (participants) namely: a limited liability partnership and joint stock company.

### Limited liability partnership ("LLP")

A LLP is a legal entity that can be founded by one or several persons and/or legal entities. A LLP enjoys full civil capacity: it can own property that is separated from the property of its participants, enter into transactions and act as both plaintiff and claimant in litigation proceedings.

Charter capital of a LLP is divided into participatory interests (i.e. shares); participants (i.e. shareholders) of a LLP are not liable for the obligations of a LLP and generally bear the risk of losses of a LLP connected with its activity within the value of their contributions. For small businesses there is no minimum capital amount. For medium and large business, currently, the minimum amount is equivalent to approximately USD 675.

The only case when the "corporate veil" can be pierced is when the bankruptcy of a LLP has been triggered by its participants. In such cases relevant participant is liable together with a LLP to its creditors if a LLP does not have enough property (i.e. bears subsidiary liability).

A LLP is liable for its obligations with all belonging to the LLP property and is not liable for obligations of its participants.

### Joint stock company ("JSC")

A JSC is a legal entity that issues shares to raise funds for its activities. The shares can be common and preferred.

The legal status of a JSC is similar to a LLP. A JSC enjoys full civil capacity: it can own property that is separated from the property of its shareholders, enter into transactions and act as both plaintiff and claimant in litigation proceedings.

Since charter capital of a JSC is divided into shares (common and privileged), the shareholders' risk of losses connected with JSC's activities is limited by the value of their shares, except in certain cases, e.g. when the bankruptcy of a



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Later, she had worked for Kazakhstan Government in the Ministry of taxes and participated in drafting first tax Code of Kazakhstan. Prior to joining GRATA International, she had worked for more than 10 years as an in-house (later head of Legal Department) in National Welfare Fund “Samruk-Kazyna” Group.

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LLP has been triggered by its shareholders. The minimum charter capital requirement for a JSC is approximately USD 340,000.

A JSC is liable for its obligations with all belonging to the JSC property and is not liable for obligations of its shareholders.

Some companies can be established in form of JSCs only: for example, banks and insurance companies.

#### Foreign Investment Restrictions

Existing legislation of Kazakhstan provides for certain forms of restrictions on foreign ownership of certain assets (e.g. essentially only Kazakhstani citizens and local legal entities with foreign ownership less than 50% may privately own plots of farmland) and the volume of foreign investments in specific sectors of the economy (e.g. mass media, telecommunications, banking, insurance, etc.). Also, investment by a foreign or local investor in certain types of entities or

assets requires governmental approval. The above restrictions also apply in the event of foreclosure on the relevant company.

#### Taxation

Severance tax is payable in respect of extraction of mineral resources in Kazakhstan. The basis for this charge is the volume of extracted mineral resources. The rule for determining the basis of calculation of the severance tax for each type of the mineral resources is specifically stipulated separately. There are also the following main taxes that shall apply to subsurface use operations: (i) signature bonus (this bonus is a fixed payment for the right to conduct subsurface use operations in the contract area); and (ii) commercial discovery bonus (this bonus is payable for each commercial discovery and is based on the actual volume of discovered mineral deposits approved by the authorised state agency).

As for general tax regulation, in accordance with the Tax Code these are principal taxes applicable to a Kazakh legal entity:

- The corporate tax rate is 20 %.
- The current rate for VAT is 12 % on taxable turnover and taxable import.
- The current rate for individual income tax is 10 %, withheld by employers from payments to employees.
- The current rate of social tax is 11%, withheld by employers from payments to employees.
- The general rate of property tax is 1.5 % on the average book value of the property classified, immovable property, or investments in immovable property.
- Land tax rates depend on the land category.
- Tax rates for vehicles depend on the type of the vehicle and its engine volume.
- Export rent tax (this tax applies to exported crude oil, gas condensate and coal).

Kazakhstan has entered into bilateral treaties to avoid double taxation with 52 countries, including double-taxation treaty with China dated 12 September 2001.

It worth mentioning that from 1 January 2018 a new tax code is expected to take legal effect that is designed to replace the current Tax Code.

#### Investment Preferences

Under the Entrepreneurial Code, an investor may be entitled to obtain investment preferences designed to encourage investments in certain industries. The Entrepreneurial Code defines an investment as any kind of property (except for goods designated for personal consumption), including matters of financial leasing, as well as rights to such matters, being contributed to the charter capital of a legal entity or to increase of fixed assets to be used in the course of entrepreneurial activity, as well as fixed assets produced or received within the framework of a public-private partnership agreement.

The principal state body overseeing investments in Kazakhstan is the Committee

on Investments within the Ministry of Investment and Development. Among other things, the Committee on Investments is charged with negotiating and concluding investment contracts with investors pursuant to the Entrepreneurial Code. In June 2014 the Government created the position of investment ombudsman, i.e., a government official whose purpose was to review and try to resolve investment issues and disputes between investors and the state. The ombudsman is not intended to have any binding powers and can only recommend a solution. The Committee on Investments is supposed to provide administrative assistance to the investment ombudsman.

The Entrepreneurial Code provides most foreign investor investment guarantees expected by them, such as: stability of contracts (with certain exceptions), free use of income, transparency of state investment policy, stability of tax and foreign labor law in relation to priority investment contracts, reimbursement of losses in the event of nationalization and requisition, and certain others.

With the intention of promoting industrialization and diversification of Kazakhstan's economy, the Entrepreneurial Code creates a system of benefits and preferences which supports direct investments in certain areas. These areas include, for instance, generation of electric power. The full list of eligible areas is provided in the Government Decree No. 13 dated 14 January 2016 "On certain issues of implementation of measures of state support of investments".

For the purposes of determining eligible investment preferences, investment projects are divided into the following categories:

1. an ordinary investment project, which is aimed at creation of new and extension and modernization of existing production facilities;
2. a priority investment project, which: (a) is to be implemented in certain limited areas (i.e. this list of eligible areas for priority investment projects is different from the ordinary





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investment projects' list of eligible areas) by a newly established local entity that derives at least 90% of its income from this project; and (ii) anticipates investments of not less than, roughly, USD 13.9 million; and

3. a strategic investment project, which is a project that can have a strategic impact on the economic development of the Republic of Kazakhstan and is included in a special Government list and for which the investment contract was signed before 1 January 2015.

The following investment preferences are available for ordinary investment projects:

1. an exemption from customs duties (for a period up to five years) and from VAT on imported equipment and components, and raw materials required for investment projects;
2. exemption from VAT on importation of raw and/or other materials under the investment contract (effective from 1 January 2017); and

3. state in-kind grants, i.e. assets (land plots, buildings, facilities, machines and equipment, computers, measuring and controlling instruments and devices, vehicles (save for automobiles), production and household tools) which are granted for gratuitous use for the duration of the contract; if the investor complies with its commitments these assets become the property of the investor. The value of these grants cannot exceed 30% of the total planned investment into the fixed assets of the local entity.

The following investment preferences are available for priority and strategic investment projects (in addition to those available for ordinary projects):

1. tax preferences in the form of corporate income tax, land tax and property tax exemptions (for up to 10 years); and
2. an investment subsidy of compensation by the Government of up to 30% of the costs relating to construction, assembly and



acquisition of equipment (the subsidy should be approved by a separate Government resolution in each case);

3. stability of tax laws;
4. stability of labor laws; and
5. assistance to contract holders on a one-stop-shop basis from the Committee on Investments with respect to liaison with various state agencies.

To receive these investment benefits, a local company (for priority contracts this must be a newly established local company) must sign an investment contract with the Committee on Investments setting forth the investment commitments of the investor, the duration of the investment project, and the benefits granted. The investment contract should be registered by the Committee in order to be valid. In addition to these benefits, the Tax Code gives local companies an automatic right to accelerated for straight-line tax depreciation of fixed assets (either before they are put into operation or within three years afterwards) when certain conditions are met. The taxpayer is not required to make any specific new investments (other than to acquire the assets) or to enter into an investment contract in order to obtain this right. The Government has also introduced a number of financial support measures for entities that carry out activities in certain sectors (these largely correspond to the priority types of activity discussed above). The financial support measures include subsidizing interest rates on loans and issuance of state guarantees for bank loans.

#### **Currency control and repatriation of profit**

Generally, foreign currency exchange transactions are carried out without restrictions. Certain types of currency transactions are subject to either a registration regime (e.g. a loan from foreign lender in excess of USD500,000 and with a time frame of more than 180 days needs to be registered with the National Bank)

or a notification regime. No specific tax is imposed by Kazakhstan legislation on foreign currency exchange operations.

No restrictions are applicable and no authorisation is generally required for repatriation of funds from the Republic of Kazakhstan. Profit repatriation is normally effected through dividend mechanics. A resident distributing dividends has to withhold tax at source on payment of dividends, at a rate of 15%, unless the rate is reduced by an applicable double-taxation treaty.

#### **Equipment import restrictions**

The importation of project equipment is generally subject to the requirements of the customs legislation (e.g. payment of applicable customs duties and taxes, etc.). However, certain benefits are established by the legislation with respect to imports of specific equipment and machinery, depending on specifics of imported goods. The project company may need to obtain a number of licences depending on the kinds of activity the project company will be involved in, including for import of certain goods (e.g. explosives) according to the list approved by the Government of Kazakhstan. It also shall be noted that in order to protect domestic producers of goods and the national economy as a whole, the Government of Kazakhstan may enact export or import bans, import or export quotas and safeguard measures against imports. Import quotas are enforced by means of licensing.

#### **Foreign employee restrictions**

When hiring foreign citizens or stateless persons, a Kazakh employer (i.e. project company) has to obtain a work permit for each foreign specialist, including the top management of Kazakhstan incorporated companies. There are a number of exemptions from the general requirement to obtain a work permit. Foreigners holding a residence permit, foreign citizens and stateless persons holding the position of head of a branch or a representative office of a foreign



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company or those travelling to Kazakhstan for business purposes for an aggregate period not exceeding 120 calendar days per year do not need a work permit.

#### Licenses and regulatory approvals

There are various government approvals required for companies operating in certain sectors of the Kazakh economy. For instance, a company may be required to obtain a licence from the relevant state authority in order to be able to carry out a particular type of activity (e.g. exploitation of the main gas pipeline). Such licences, generally, cannot be held by a foreign entity. Other approvals may be required, including, inter alia, approvals for construction, etc.

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## 哈萨克斯坦：“一带一路”的纽带

哈萨克斯坦对中国的“一带一路”倡议抱有很大雄心，因为就地理位置而言，哈萨克斯坦是中国和西方国家之间理想的连接点，其对“一带一路”的兴趣无可讳言。哈萨克斯坦政府已经实施了光明大道工程 (Nurly Zhol)，这是一项斥资 90 亿美元的国内经济刺激计划，旨在建设公路、铁路等基础设施，并对其进行现代化改造。

2013 年末以来，哈萨克斯坦的经济一直遭受石油价格下跌的影响，因此，未来的经济增长将依赖基础设施和区域贸易的发展。哈萨克斯坦志在成为中亚地区最大的商业和交通枢纽，成为贯通欧洲和亚洲的桥梁。它认为中国的一带一路倡议是实现这一目标的有效方式。

哈萨克斯坦对中国的能源安全至关重要。其石油、天然气、煤炭和铀的储量均排世界前十，它拥有战略性的地理位置，可以控制从中亚到东亚、西亚地区的石油和天然气运输。国土接壤、运输路线安全，以及该地区无敌对势力，这些是哈萨克斯坦向中国供给能源的主要优势。这也恰好可以说明，为什么早在 2013 年习近平主席于阿斯塔纳正式宣布“丝绸之路经济带”战略的前几年，中国就开始在哈萨克斯坦大规模投资石油和天然气基础设施建设。

截止 2014 年底，中国在独联体国家的对外直接投资额为 270 亿美元，其中 236 亿美元投资于哈萨克斯坦，而投资俄罗斯的只有 34 亿美元，哈萨克斯坦是俄罗斯的 7 倍。

中国在哈萨克斯坦的主要投资项目之一，是哈萨克斯坦——中国石油管道项目。这是中国首个可以从中亚直接进口石油的管道。它从哈萨克斯坦的里海海岸一直延伸至中国的

新疆。管道的所有权归属于中国石油天然气集团公司（中石油）和哈萨克斯坦国家石油和天然气公司。截止 2015 年底，通过阿塔苏——阿拉山口管道向中国输送的石油已达 1,180 万吨。

其他对中国能源安全具有重要意义的管道还包括中亚——中国天然气管道，它全长 3,666 公里，是连接土库曼斯坦与中国的基础设施支柱。它由中国建造，从土库曼斯坦和乌兹别克斯坦边境出发，经哈萨克斯坦到中国境内的靖边，耗资 73 亿美元。

## 潜在问题

中国对哈萨克斯坦的对外直接投资可能存在障碍。计划在哈萨克斯坦投资项目的中国投资者，可能会面临不稳定的法律和监管环境，以及不确定的现行法律存续和合同执行，这在其他任何新兴国家中都会遇到。近期通过的《仲裁法》，在处理具有主权国家特征的政治实体和 / 或国家机构的纷争中，其国际仲裁条款的执行具有不确定性，这尤其为外国投资者带来了风险。

到目前为止，中国在哈萨克斯坦的主要能源投资项目，都经由特别措施予以区别对待。由此，中国投资者通过各种形式获得了额外的法律保护，而这些措施在一般法律中是不提供的。例如，为了使银行接受中国石油管道、中亚——中国天然气管道项目，哈萨克斯坦和中华人民共和国签署了史无前例的国际条约，并由哈萨克斯坦议会批准通过。这份条约是为这两个特定项目特别制定的法律框架，优先于任何与之冲突的哈萨克斯坦法律。

然而，笔者认为，如果未来“一带一路”倡议下的所有投资项目都沿用这一独特的对外

投资模式，那么对哈萨克斯坦来说，可能会存在诸多问题，难以接受。

中国已控制了哈萨克斯坦 30% 的石油工业。自 2000 年以来，哈萨克斯坦的石油和天然气出口，已经从完全依赖俄罗斯变得更多元化，但是现在有人担心，哈萨克斯坦已经严重依赖中国。为了解决这一问题，哈萨克斯坦运用法律工具，防止中国、俄罗斯或其他国家进一步控制其能源行业。如有需要，也可对所谓的“战略资产”以及底土使用区域给予国家优先购买或许可转让权。这可能成为中国推进 一带一路 倡议下某些能源项目将面临的阻碍。

### 聚焦哈萨克斯坦

哈萨克斯坦在世界银行的经营便利指数排名中有所上升，现排名第三十五位。世界银行还将它列为全球 20 个对投资者最具吸引力的国家之一。哈萨克斯坦有意推进工业化和经济多元化，其法律提供了收益和优惠方案。例如：税收和关税豁免，甚至政府最多可补贴建造、安装和购买设备成本的 30%，这为某些领域的直接投资（包括交通、基础设施、农业、精炼石油产品制造以及发电）提供了有力支撑。

2013 年，为促进可再生能源项目的发展，哈萨克斯坦引入了“上网电价”和“包销”。2015 年通过了《公私合作法》，为公营部门和私营机构的合作项目提供了良好的法律框架。

因此，中国在 一带一路 倡议下的对外直接投资，必然能在哈萨克斯坦予以实施，因为哈萨克斯坦总体的法律框架已对投资者十分有利。

### 抓住机遇

哈萨克斯坦需要思考发展的替代方案，要通过多样化和创新，而非单纯依靠自然资源。“一带一路”倡议为哈萨克斯坦吸引中国资金和技术提供了独特的机会，使其成为欧亚大陆最大的交通枢纽，并可向中国出口有机食物。

哈萨克斯坦拥有吸引对外直接投资的良好法律体系。其庞大的私有化计划旨在使国家在

经济中的占比到 2021 年减至 15%。特别是未来几年，预计会在阿斯塔纳国际金融中心（以下简称 AIFC）的证券交易所多个 IPO（首次公开发行股票）上市项目。AIFC 是在英国法律的基础上组建的全新的金融中心，参与者将享受前所未有的优惠，例如，免征税款 50 年、资本自由流动、现代化基础设施、免费租赁办公室两年，以及外国人专享的签证制度。AIFC 计划于 2018 年投入运行。

因此，哈萨克斯坦有望成为中国企业在“一带一路”倡议下的最佳投资目的国，以及中国进入欧亚经济联盟这一包含 1.83 亿人口的单一市场的门户。

### 法律架构

哈萨克斯坦的法律体系（除上述与 AIFC 相关的法律）是与多数前苏联国家相似的民法体系。它通过哈萨克斯坦宪法、各种法典、法律、法令、法规（具有法律效力）、规定、指示、命令和其他行为规范进行管理。

### 争端解决机制

哈萨克斯坦法院体系包含三个层次：哈萨克斯坦最高法院、地区法院和与地区法院地位等效的法院（例如，阿拉木图市法院、阿斯塔纳市法院），以及地方市、区法院。此外，2015 年，阿斯塔纳市法院和最高法院成立了投资事务委员会，以解决涉及投资者的纠纷。最后，值得一提的是，AIFC 特别法院预计于 2018 年投入运行，它将受理：(i) 金融中心参与者（在 AIFC 区域注册的公司）之间的纠纷；(ii) 根据 AIFC 法律在金融中心进行的交易纠纷；(iii) 由当事人向 AIFC 法院提出的其他纠纷。AIFC 法院将根据英国程序法处理纠纷，其作出的判决可在哈萨克斯坦境内直接强制执行。

除非哈萨克斯坦与相关境外国家已达成互相承认和执行判决的协议，否则哈萨克斯坦法院一般不执行国外法院的判决。哈萨克斯坦仅与少数几个国家达成了这样的协议，即独联体国家、土耳其和中国，而未与英国、美国、爱尔兰或其他任何西方国家达成该协议。因此，西方国家的法院判决一般无法在哈萨克斯坦执行。故而不建议将纠纷提交英国法



**Shaimerden Chikanayev**  
合伙人, GRATA International

沙默登·希坎那耶夫 (Shaimerden Chikanayev) 是格拉塔国际律师事务所 (GRATA International) 的合伙人, 并负责事务所的“全球银行和金融”业务。希坎那耶夫先生的业务重点是金融领域和并购交易, 包括项目融资和资本市场、基础设施交易、以及多个行业的试行与重组。在加入格拉塔律师事务所之前, 他曾在杜威路博律师事务所 (Dewey & LeBoeuf) 阿拉木图办公室担任律师, 也在欧洲复兴开发银行伦敦办公室担任过法务。他在基础设施法规方面学识渊博, 并在关税体系改革、能源、公共事业和自然垄断行业法规, 以及哈萨克斯坦法律和指令的起草、为各类股东了解和熟悉立法修订和新的法律、获得哈萨克斯坦各级政府的审批等方面具有丰富的经验。

沙默登在杜克大学法学院 (美国) 获得法学硕士学位, 在欧亚国立大学法学院 (哈萨克斯坦) 获得专家学位 (相当于法学博士), 并在中国外交学院 (中国) 完成了外交官学习的非学位课程。

院, 除非哈萨克斯坦的交易方在境外有有形资产, 且英国法院的判决可在该地强制执行。

但是, 国外的仲裁裁决一般都可可在哈萨克斯坦执行。哈萨克斯坦是《1958年关于承认和执行仲裁裁决的纽约公约》的成员国。如果另一成员国作出某项仲裁裁决, 那么只要满足《公约》设定的条件和哈萨克斯坦的程序规定, 该裁决即可在哈萨克斯坦执行, 且无需重新审查案情。但是, 请注意, 具体实践中, 在哈萨克斯坦执行国外的仲裁裁决会比较困难。

#### 在哈萨克斯坦设立合法实体

为在哈萨克斯坦设立合法实体, 国外投资者可设立分支办事处 / 代表处或哈萨克斯坦法律实体。考虑到治理结构便利和责任有限, 股东 (参与者) 在哈萨克斯坦开展业务, 最

常使用的两种商业组织形式为有限责任公司和联合股份公司。

#### 有限责任公司

有限责任公司是由一人或多人和 / 或法人设立的法人实体。有限责任公司享有完全民事行为能力: 它可拥有独立于参与者的资产、从事交易, 并在诉讼中充当原告或被告。

有限责任公司注册资本的最小单位为出资份额 (即股份); 其参与者 (即股东) 不对企业的负债负责, 通常只承担不超过其出资额的企业损失。对小企业来说, 没有最低出资要求。对于中大型企业, 目前最低出资额大约 675 美元。

只有在参与者导致了企业破产时, “公司面纱”才会被刺破。在这种情况下, 如果企业





## Gulnur Nurkeyeva

中国业务负责人，

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姑玲 (Gulnur Nurkeyeva) 是格拉塔国际律师事务所的中国业务部负责人。她在哈萨克斯坦法律服务市场具有16年的工作经验。她于1999年在阿斯塔纳律师协会注册，成为合格律师，开始执业。

后来，她在哈萨克斯坦税务部工作，参与起草了哈萨克斯坦的第一部《税法典》。在加入格拉塔律师事务所之前，她在主权财富基金——萨姆鲁克·卡泽纳集团 (Samruk-Kazyna) 担任法务工作已经超过10年 (后期担任法务部门负责人)。

姑玲在北京大学 (中国) 获得法学硕士学位，在卡拉干达国立大学法学院 (哈萨克斯坦) 获得法学学士学位。她的业务重点是公司法、并购、建造、诉讼和劳动法。

没有足够的资产 (即，承担附属责任)，那么该参与者应当承担连带责任。

有限合伙企业对所有属于企业的义务均负有责任，对其参与者的义务不负任何责任。

### 联合股份公司

联合股份公司是通过发行股票筹集资金来开展业务的法律实体。股票可以是普通股和优先股。

联合股份公司的法律地位与有限合伙企业类似。联合股份公司享有完全民事行为能力：它可拥有独立于股东的资产、从事交易，并在诉讼中充当原告或被告。

联合股份公司注册资本的最小单位为股份 (普通股和优先股)，除非在某些情况下，例如公司股东导致公司破产，否则股东承担公司亏损的最高限额为其出资额。联合股份公司的最低注册资本约 340,000 美元。

联合股份公司对所有属于公司的义务均负有责任，对其股东的义务不负任何责任。

某些企业仅能以联合股份公司的形式设立，例如银行和保险公司。

### 外国投资限制

哈萨克斯坦现有法律对外资持有某些资产 (例如：基本上只有哈萨克斯坦居民和外资持股不超过 50% 的本国法人实体才可持有私人农场土地) 和在特定经济领域的外国投资额 (例如：大众媒体、电信、银行、保险等) 有各种限制。此外，国外或本国投资者投资某些特定企业或资产需要得到政府批准。上述限制也适用于相关企业丧失抵押品赎回权的情况。

### 税负

在哈萨克斯坦开采矿产资源应缴纳开采税，计税基础是开采的矿产资源量。各类矿产资源开采税的计算方法，都各有相应的具体规定。针对底土使用，有两个主要税种：(i) 签字费 (这项费用是基于合同区的底土使用权的固定费用)；(ii) 商业探明费 (这项费用应在每次探明商业储量时支付，并根据现





## Lola Abdukhalykova

律师,

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洛拉·阿卜杜哈耶科娃 (Lola Abdukhalykova) 是格拉塔国际律师事务所银行和金融团队的律师。她的业务方向是银行和金融, 包括银行和企业贷款; 项目融资; 公营部门和私营机构合作以及基础设施交易。

洛拉在伦敦玛丽王后大学获得法学硕士学位, 在哈萨克斯坦国立大学 (阿拉木图) 获得学士学位 (优秀)。

授权的国家机构核准的实际矿物储量计算费用)。

至于一般的税收规定, 根据《税收法典》, 有以下适用于哈萨克斯坦法律实体的主要税种:

- 公司所得税, 税率 20%。
- 增值税, 应税营业收入和应税进口额的现行增值税率为 12%。
- 个人所得税, 由雇主代扣代缴, 现行税率为 10%。
- 社会税, 由雇主代扣代缴, 现行税率为 11%。
- 财产税, 对分类的财产、不动产或对不动产的投资进行征收, 税率为平均账面价值的 1.5%。
- 土地税, 根据土地种类征收。
- 机动车税, 根据机动车类型和发动机排气量征收。

- 出口税 (该税适用于出口原油、液化天然气和煤炭)。

哈萨克斯坦已与 52 个国家签订了避免双重征税的双边条约。其中, 与中国的签订日期为 2001 年 9 月 12 日。

值得一提的是, 从 2018 年 1 月 1 日起, 一部新的《税法典》将产生法律效力, 取代现行《税法典》。

### 投资优惠

根据《创业法案》, 投资者可获得一定的投资优惠, 这些优惠旨在鼓励投资某些特定行业。《创业法案》将投资定义为任意形式的财产 (除了用于个人消费的商品), 包括金融租赁资产、对这些资产享有的权力 (如向法律实体出资, 或增加用于企业活动的固定资产), 以及在公营和私营资本合作协议框架下生产或接收的固定资产。

监管对哈萨克斯坦投资的主要国家机构是投资和发展部下设的投资委员会。除其他事项



## Dinara Otegen

初级律师，

**GRATA International**

迪娜拉·奥特琴是 (Dinara Otegen) 格拉塔国际律师事务所银行和金融团队的初级律师。她的业务方向是银行和金融、企业并购，以及公司法。

迪娜拉在银行和金融交易（重点是资本市场和公司法）、代表国外客户为其对当地企业进行并购交易进行尽职调查、哈萨克斯坦共和国境内支付系统注册咨询等方面具有经验。

外，投资委员会主要负责根据《创业法案》与投资者谈判和订立投资合同。2014年6月，政府设立了投资监察专员的职位，即由专门的政府官员审查、解决投资问题以及投资者与国家之间的争端。监察专员没有任何约束力，只能提出解决建议。投资委员会应向投资监察专员提供行政协助。

《创业法案》为大多数国外投资者提供了他们所期望的投资保证：例如，合同的稳定性（但有一些例外）、收入自由使用、国家投资政策透明、与优先投资项目合同相关的税收和劳动法律的稳定性、发生国有化和征收事件时的损失补偿，等等。

为了促进哈萨克斯坦经济的工业化和多样化，《创业法案》创立了一套支持直接投资某些特定领域（例如，发电）的利益和优惠制度。符合条件领域的完整清单刊于2016年1月14日的第13号政府令：“关于实施国家支持投资措施的若干问题”。

为确定符合条件的投资优惠，可将投资项目分为以下几类：

1. 一般投资项目，旨在新建生产设施，以及对现有生产设施进行扩展和现代化改造；
2. 优先投资项目，具有以下特点：(1) 通过新建的地方企业在某些有限领域（优先投资项目与普通投资项目的投资领域清单不同）实施的项目，且企业90%以上的收入需源于该项目；(2) 预计投资额不低于1390万美元；
3. 战略投资项目，即对哈萨克斯坦共和国经济发展具有战略影响的项目，已列入政府特别清单，并于2015年1月1日前签署了投资合同。

下列投资优惠适用于一般投资项目：

1. 免除关税（期限最长为五年）、进口设备和零部件以及投资项目所需原材料的增值税；

2. 免除进口投资合同项下原材料和 / 或其他材料的增值税（自 2017 年 1 月 1 日起生效）；
3. 国家以实物方式补助：例如，允许在合同期限内无偿使用资产（土地、建筑物、设施、机器设备、电脑、测控仪器和设备、车辆（除汽车）、生产和生活工具）；如果投资者遵守承诺，那么这些资产可转为投资者的财产。这些补助的资产价值不得超过向地方企业固定资产投资总额的 30%。

下列投资优惠适用于优先投资项目和战略投资项目（包含对一般投资项目的优惠，额外增加）：

1. 税收优惠：减免企业所得税、土地税和财产税（最长 10 年）；
2. 政府对建造、安装和购置设备费用的投资补贴，最多补贴费用的 30%（补贴应根据个案由政府单独决定）；
3. 稳定的税法；
4. 稳定的劳动法；
5. 在联络各国家机构方面，投资委员会为合同持有人提供一站式服务。

为享受这些投资利益，地方公司（如果是优先投资项目，那么必须是新成立的地方公司）必须与投资委员会签订投资合同，约定投资者的投资承诺、投资项目期限和准予的利益。投资合同应由该委员会登记后生效。除了这些利益外，《税法典》还规定，在满足特定条件时，地方公司可自动对（在投产前或投产后三年内的）固定资产进行直线加速折旧。纳税人无须作任何特定的新投资（购买资产除外）或订立投资合同，即可享受这项权利。政府还为在某些行业开展经营活动的企业提供财政支持措施（这些措施大体与上文讨论的项目优先级类型一致）。财政支持措施包括利息补贴，以及为向银行贷款提供国家担保。

#### 外汇管制和利润汇回 -

一般来说，换汇交易并无限制。某些类型的外汇交易需要登记（例如，从国外借贷超过 50 万美元，且贷款期超过 180 天，则需要向哈萨克斯坦国家银行登记）或通知。哈萨克

斯坦关于外汇兑换业务的法律中没有规定具体的税收。

资金从哈萨克斯坦汇回，一般来说没有任何限制，无须征得授权。利润汇回通常通过股息机制进行。哈萨克斯坦居民（含法人）分配股息时，需按照 15% 的税率代扣代缴税款，除非适用的双重征税条约规定降低税率。

#### 设备进口限制

进口项目设备一般须符合海关规定（例如支付合适的关税和税款等）。但是，法律规定，进口特定的设备和机器可以享受一定的优惠，这需视进口商品的具体情况而定。根据哈萨克斯坦政府核准的清单，项目公司可能需要依据其参与的活动种类申请若干许可证，包括进口某些特定商品（例如炸药）。还应指出，为保护国内生产商和整体国民经济，哈萨克斯坦政府可制定进出口禁令、进出口配额和针对进口的保护措施。进口配额通过许可证方式执行。

#### 雇佣外国劳工限制 -

当雇佣外国公民或无国籍人士时，哈萨克斯坦雇主（即项目公司）必须为每一位外国专家，包括哈萨克斯坦法人公司的高级管理人员申请工作许可证。也有一些例外情况可免除申请工作许可。例如，持有居留证的外国人、在国外的哈萨克斯坦分公司或代表处担任最高负责人的外国公民或无国籍人士、或者每年来哈萨克斯坦出差累计不超过 120 天的外国人，不需要工作许可证。

#### 许可证和监管审批

公司在哈萨克斯坦某些行业开展经营活动需获得各种政府审批。例如，某公司可能需持有有关国家机构的许可证，才能开展特定类型的活动（如使用主要的天然气管道）。一般来说，外国企业不能持有这种许可证。其他必需的审批还包括建造审批等。

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