



# ICLG

The International Comparative Legal Guide to:

## Corporate Governance 2016

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## EDITORIAL

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Welcome to the ninth edition of *The International Comparative Legal Guide to: Corporate Governance*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of corporate governance.

The guide is divided into country question and answer chapters. These provide a broad overview of common issues in corporate governance laws and regulations in 30 jurisdictions.

All chapters are written by leading corporate governance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors, Bruce Hanton and Vanessa Marrison of Ashurst LLP, for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

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# Kazakhstan

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## 1 Setting the Scene – Sources and Overview

### 1.1 What are the main corporate entities to be discussed?

#### 1.1.1 Types of corporate entities in Kazakhstan

Under Kazakh law, all legal entities fall into two categories, depending on whether or not the acquisition of profit is the main purpose of their activity: commercial organisations; and non-commercial (non-profit) organisations.

**Commercial organisations** can exist in the following forms: government enterprise (*gosudarstvennoe predpriyatie*); economic partnerships (*hozyaistvennoe tovarishchestvo*); joint stock company (*aktsionernoe obshchestvo*); and production cooperative (*proizvodstvennyi kooperativ*) (see article 34.2 of the Civil Code). Economic partnerships (*hozyaistvennoe tovarishchestvo*) include the following legal forms: limited liability partnership (*tovarishchestvo s ogranichennoi otvetstvennost'yu*); additional liability partnership (*tovarishchestvo s dopolnitelnoi otvetstvennost'yu*); full partnership (*polnoe tovarishchestvo*); and *kommandit* partnership (*kommanditnoe tovarishchestvo*).

**Non-commercial (non-profit) organisations** can exist in the following forms: institution (*uchrezhdenie*); public association (*obshchestvennoe ob'edinenie*); fund (*fond*); joint stock company (*aktsionernoe obshchestvo*); consumer cooperative (*potrebitel'skiy kooperativ*); religious association (*religioznoe ob'edinenie*); and other forms provided by legislative acts (article 34.3 of the Civil Code dated 27 December 1994 (the “**Civil Code**”)).

In this chapter, we shall concentrate on two types of commercial organisations that are most frequently used for business in Kazakhstan due to the convenient governance structure and liability limitation which is normally sought by shareholders (participants): limited liability partnership (*tovarishchestvo s ogranichennoi otvetstvennost'yu*) (“**LLP**”); and joint stock company (*aktsionernoe obshchestvo*) (“**JSC**”).

#### 1.1.2 LLPs and JSCs

The Civil Code sets out the principal rules applicable to both the LLP and JSC. More specific rules are contained in the law of the Republic of Kazakhstan dated 22 April 1998 No 220-I “On Partnerships with Limited and Additional Liability” (the “**LLP Law**”) and the Law of the Republic of Kazakhstan dated 13 May 2003 No 415-II “On Joint Stock Companies” (the “**JSC Law**”). There exists other legislation which addresses particular aspects of LLPs and JSCs.

JSCs and LLPs are both considered legal entities. Normally, these are commercial (as opposed to non-commercial/non-profit) organisations, although a JSC may be formed as a non-commercial organisation. Generally, JSCs and LLPs may be engaged in any businesses not prohibited by law; some activities are subject to licensing.

The capital of an LLP is divided into participatory interests. A share is a security issued by a JSC. It represents the right: (i) to participate in the management of the JSC; (ii) to receive dividends; (iii) to receive part of the property of the JSC upon its liquidation; and (iv) other rights according to the JSC Law and other legislative acts.

Shares can be authorised and placed. Authorised shares are shares whose issuance has been registered with the competent authority in accordance with the Kazakhstan securities legislation. Placed shares are shares of the JSC that have been paid out by the shareholders and investors on the primary securities market.

A voting share is a placed common share and preferred share to which the voting right has been granted by the JSC Law. Voting shares do not include shares bought out by the JSC and shares held in the nominal holding by an entity, information on which is not available in the system of the central depository.

A common share provides the rights indicated above to its holder. A preferred share provides the pre-emptive (before common shares holders) right to receive dividends in the pre-defined guaranteed amount set out by the JSC charter and the part of property upon the JSC liquidation. The volume of the preferred shares should not exceed 25% of the total amount of authorised shares. The amount of dividends on preferred shares cannot be lower than the amount of dividends paid on common shares for the same period. Moreover, dividends on common shares are not paid until dividends on preferred shares are paid in full. It is prohibited to pay dividends on preferred shares using other JSC securities. A preferred share does not provide the right to participate in JSC management, except for the following cases:

- in cases where the general meeting of shareholders (the “**GMS**”) considers an issue that can limit the preferred shareholder’s rights. Such an issue is considered as approved if no less than  $\frac{2}{3}$  of the total number of placed (except for bought out) preferred shares have voted for the respective limitation of rights;
- in cases where the GMS considers an issue relating to reorganisation or liquidation of the JSC; and
- in cases where the dividend on the preferred share has not been fully paid out during the three months following the due date.

Charters or resolutions of the GMS/the sole shareholder may provide for one “golden share”. A golden share does not take part in the formation of the charter capital and receipt of dividends. The owner of the golden share has a veto right with respect to decisions of the GMS, board of directors (the “BoD”) and executive body set out by the charter. The veto right certified by the golden share is non-assignable.

One of the types of JSCs is the so-called public joint stock company. Under article 4-1 of the JSC Law, a JSC can be recognised as “public”, provided that: (a) the common shares of the JSC have been offered for purchase to an unlimited range of investors in the non-organised and/or organised securities market (i.e. on the stock exchange); (b) no less than 30% of the total amount of the placed common shares of the JSC shall belong to shareholders, each of whom owns no more than 5% of the common shares out of the total number of the placed common shares; (c) volume of trades with common shares of the JSC shall conform to the requirements established by the National Bank of the Republic of Kazakhstan (the “NBK”); and (d) the shares of JSC shall be included to the list of stock exchanges operating in Kazakhstan (i.e. listed on Kazakhstan Stock Exchange (the “KASE”)).

There are the following statutory requirements applicable to a public JSC as opposed to an “ordinary” JSC. The public JSC must have: (a) a corporate governance code (the “CGC”); (b) a corporate secretary; (c) a corporate website; (d) prohibition of “golden share”; and (e) stricter disclosure requirements as indicated in section 4.

### 1.1.3 The main differences between LLPs and JSCs

**Charter capital.** To operate an LLP and JSC, it is necessary to form a charter capital. The requirements to charter capital of an LLP and a JSC are summarised in Table 1 below.

**Table 1. Charter capital of LLPs and JSCs**

Issue	LLP	JSC
Minimum value of the charter capital.	No less than 100 so-called “monthly calculation indices” (the “MCI”) or approximately USD 635, save for certain exceptions (e.g. unless the LLP is a so-called “subject of small business” (see article 24.3 of the Business Code), when the charter capital shall be no less than 0 Tenge (article 23 of the LLP Law). The MCI is a co-efficient, used for the calculation of benefits and other social payments and for the application of fines, sanctions, taxes and other payments according to Kazakh legislation. One MCI for 2016 is KZT 2,121.	No less than 50,000 MCIs or approximately USD 316,000 (article 10 of the JSC Law) unless the relevant JSC is a special type of legal entity (e.g. bank, insurance company, etc.) for which a stricter requirement is contemplated.

Issue	LLP	JSC
Way of formation.	Contribution by participants of different property to the LLP’s charter capital. A participant gets participatory interest in an LLP <i>pro rata</i> to its contribution to the charter, unless it is otherwise agreed between the participants (article 23.6 of the LLP Law). This means that a different allocation of the interest may be envisaged by the participants, e.g. one participant may contribute USD 100 and the other USD 5,000, and both of them may get a 50% stake in the LLP.	Placement (purchase) of shares by the shareholders/investors (article 11.1 of the JSC Law). Issue of shares is subject to state registration with the NBK. This is a relatively manageable procedure and it usually takes a month or more. Registration is also associated with certain compliance burdens (e.g. approval of the results of the placement of shares with the NBK, etc.).
Timing for the initial formation of the charter capital.	No later than one year upon state registration (the minimum charter capital must be contributed prior to registration).	30 days upon registration of the JSC.
Mandatory evaluation by a licensed appraiser of non-monetary contributions to the charter capital.	For contributions exceeding 20,000 MCIs or approximately USD 126,250 (article 23.4 of the LLP Law).	Always (article 21.1 of the JSC Law).

**Corporate governance.** There are a few issues relevant for the analysis (when comparing LLPs and JSCs from a corporate governance perspective):

1. **Public nature.** A JSC is a public company, unlike an LLP. JSC corporate bodies’ competencies/authorities are generally defined and cannot be allocated/shared between each other (e.g. the GMS takes decisions referred to the exclusive competence of the BoD). On the other hand, the LLP is more flexible in this respect, meaning that the general meeting of participants (the “GMP”) can generally take decisions referred to the competence of other bodies.
2. **Independent director.** It is not mandatory to have an independent director in an LLP, unlike the JSC.
3. **Pre-emptive right.** Generally, LLP participants have a pre-emptive right to purchase the participatory interest of another participant prior to it being offered to a third party (unlike the JSC shareholders). If more than one participant would like to buy a participatory interest, then such interest may be purchased by each participant *pro rata* to their current holding (unless it is otherwise provided for in the constitutional documents). In the event that the participants do not intend to purchase the offered participatory interest, the LLP itself may have a pre-emptive right to buy it. Thus, before acquiring or selling a participatory interest in an LLP, a waiver of pre-emptive right must be obtained from both the participants and the LLP. JSC shareholders have a pre-emptive right in the case of placing authorised shares or other securities convertible to simple shares or selling shares that have been previously bought out by the JSC.

4. Tag-along, drag-along, etc. It seems that the enforceability of the drag-along and tag-along provisions may be more secure in an LLP rather than in a JSC (although under both corporate forms, it is still questionable).
5. Shareholders' Agreement (the "SHA") vs. Foundation Agreement (the "FA"). We note that an LLP has the FA, unlike the JSC (its FA ceases at the moment of registration of the issuance of the shares). The FA is considered a constitutional document (considered a commercial secret). The SHA, in turn, is not considered a constitutional document. Having the FA (together with the SHA or alone) in an LLP may add more security in terms of potential enforceability of relevant arrangements (although, of course, this is not guaranteed).
6. Tax issues. Overall, JSCs and LLPs are similar in terms of taxation. However, the JSC may offer more flexibility, e.g. disposal of shares in a JSC (on the KASE, via open trade) is tax-exempt. In addition, dividends in an LLP can only be paid on an annual basis, unlike the JSC. However, it is fair to say that an LLP can be converted into a JSC (and *vice versa*).
7. Flexibility. Generally, the LLP is considered a more flexible corporate vehicle as compared to the JSC. In our experience, LLPs are usually the preferred corporate form as joint venture vehicles because they offer more flexibility *vis-à-vis* corporate housekeeping, general compliance matters and maintaining the closely held nature of the business. A JSC requires substantial capitalisation, compliance with securities laws, higher disclosure and reporting standards, and a mandatory supervisory body (i.e. BoD), and are often mandated to be used by financial and public corporations (banks, insurance companies, etc.).
8. Approval of transactions. Approval of certain transactions by JSC is subject to specific requirements, non-compliance with which can lead to the invalidation of such transactions. For example, approval of so-called "major transactions" can generally be approved by the BoD of the GMS depending on their value. Major transactions are generally transactions, or several connected transactions, that will lead or can lead to acquisition/disposal of the property with the value of 25% or more of the total balance sheet assets of the JSC. Approval of major transactions with a value of 25% to 50% of the total balance sheet assets of the JSC are referred to the exclusive competence of the BoD, and major transactions with a value of 50% or more of the total balance sheet assets of the JSC are referred to the exclusive competence of the GMS.

The interested party transaction is generally a transaction with an affiliate of the JSC. Interested party transactions shall be approved by a simple majority of BoD members who are not interested in the conclusion of such a transaction. These members are usually (but not necessarily) independent directors. If all directors are interested in the conclusion of the transaction, or if it is not possible to take a decision on the transaction due to the absence of the required number of directors' votes, the decision on such a transaction is escalated by the BoD to the GMS consideration (article 73 of the JSC Law).

The LLP Law requires that a transaction or several connected transactions that will lead or can lead to acquisition/disposal of the property with a value of 51% or more out of balance sheet assets of LLP shall be approved by the GMP.

*Mandatory choice of JSCs and LLPs.* In certain cases, it is mandatory to select a JSC or an LLP; sometimes, it is mandatory to select either the JSC or LLP and no other form is available. For example, banks and insurance (reinsurance companies) can be established only as JSCs, and credit partnership, can be established only as LLPs.

*Decision-making process.* JSCs must have at least three corporate bodies; namely, the GMS, the BoD, and executive body (e.g. management board). The LLP, on the other hand, may generally have only two corporate bodies; namely, the GMP, and the executive body. Both JSCs and LLPs may have other corporate bodies, e.g. an internal audit committee. For more details, please see section 3 below.

*Acquisition of shares.* The JSC Law contains special restrictions and requirements with respect to the acquisition of shares in a JSC. For example, it is necessary to notify the JSC and NBK in cases where an entity (independently or jointly with its affiliates) wishes to purchase  $\geq 30\%$  shares in a JSC on the secondary market. An entity that purchased (independently or jointly with its affiliates) on the secondary market  $\geq 30\%$  shares in a JSC must publish in the mass media an offer for other shareholders to sell their respective shares. A shareholder may accept the offer within 30 days upon publishing the offer. In such a case, the buying entity must pay for the shares within 30 days upon receipt of written acceptance from the shareholder. Failure to comply with said procedure may result in a necessity for the buying entity to sell shares exceeding 29% to non-affiliated parties.

There are some other restrictions and requirements, e.g. acquisition of certain number of shares in a bank may require obtaining a special status from the NBK, etc.

Acquisition of participatory interest in LLP may also trigger certain approvals/consents (e.g. pre-transaction approval by the antimonopoly agency).

## 1.2 What are the main legislative, regulatory and other corporate governance sources?

### 1.2.1 Legislative sources

The main provisions on the corporate governance of LLPs and JSCs are contained in the Civil Code, the Law of the Republic of Kazakhstan No 2255 dated 2 May 1995 "On Economic Partnerships", the LLP Law and the JSC Law.

Certain corporate governance provisions in relation to specific types of legal entities are also contained in other industry-specific laws, e.g. the Law of the Republic of Kazakhstan No 2444 dated 31 August 1995 "On Banks and Banking Activity in Kazakhstan", and the Law of the Republic of Kazakhstan No 413-IV dated 1 March 2011 "On State Property", etc.

### 1.2.2 Internal corporate governance sources

The internal corporate governance sources include the charter and the FA for LLPs, the charter for JSCs and, if applicable, the CGC (mandatory only for listed JSCs). In addition, LLPs (rarely in practice) and JSCs can adopt internal corporate governance rules that clarify the main corporate governance provisions contained in the charter/FA/CGC.

#### 1.2.2.1 Charter

The **charter** is the main constitutional document of any LLP and JSC. The charter of a JSC and any amendments thereto shall be signed by the shareholders and shall be mandatorily notarised. There is no notarisation requirement in the case of the charter of the LLP and amendments thereto.

An LLP may operate under a standard government-elaborated charter (so-called "**typical charter**"). This is a simple charter which incorporates most of the standard provisions of the LLP Law. It may be worth pursuing this approach if the participants' structure

is simple (e.g. only one participant). However, should participants decide to incorporate more sophisticated provisions (e.g. a register of participants and a registrar – JSC “**Integrated Securities Registrar**”), the organisation authorised to keep the register of shareholders of JSCs, LLPs and register transactions with securities in Kazakhstan (the “**Registrar**”), then the typical charter will not work. Generally, a charter is considered a public document.

Kazakh law established mandatory requirements to the contents of the charters of LLPs/JSCs in article 17 of the LLP Law and article 9 of the JSC Law respectively (official legal name, address, rights and obligations of participants/shareholders, structure of corporate bodies and their competence, etc.).

#### 1.2.2.2 FA

As mentioned above, the FA is a document concluded between participants/shareholders of the LLP/JSC at the moment of establishment of the relevant legal entity.

If the LLP/JSC is established by the sole participant/shareholder, the FA shall not be concluded and the LLP/JSC is established based on resolutions of the sole participant/shareholder.

The FA of both the LLP and JSC shall be signed by the founders and shall be notarised (except LLPs that are so-called small and medium businesses).

Requirements for the contents of the FA of LLPs and JSCs are listed in article 14 of the LLP Law and article 7 of the JSC Law, and shall contain information on the founders, their rights and obligations, information on charter capital, etc.

#### 1.2.2.3 CGC

Generally, all listed JSCs shall mandatorily adopt the CGC (in a form of model CGC or in a form developed by themselves). Non-listed companies can adopt the CGC at their own discretion.

The CGC of a JSC shall be approved by the qualified majority (i.e. no less than  $\frac{3}{4}$  of the total voting shares) at the GMS.

### 1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

The main issue of corporate governance in Kazakhstan is that although corporate governance legislation is quite developed on paper and generally complies with international standards, it frequently does not work well in practice.

In the President’s message of 2014, the task was established to introduce OECD principles and standards, including corporate governance standards, in order to make Kazakhstan one of 30 developed countries in the world. As part of this task, the new Law “On Amendments to Some Legislative Acts of the Republic of Kazakhstan on Corporate Governance Issues” is proposed to be adopted for further improvement of Kazakh corporate governance regulation.

## 2 Shareholders

### 2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

Individuals and legal entities (both local and foreign) can be participants of an LLP/shareholder of a JSC.

It should be noted that the LLP cannot have as its sole participant another economic partnership that has only one participant/shareholder (i.e. in order to become the sole participant of the LLP, relevant economic partnership shall have at least two participants/shareholders) (article 10.1 of the LLP Law).

Rights of participants/shareholders are listed in Table 2 and Table 3.

**Table 2. Rights and powers of participants of the LLP**

Rights	Required threshold
Participate in management of LLP (by way of attending, and voting at the GMP (article 42.2 of the LLP Law) or otherwise. Provisions of the charter and any other documents limiting these rights are invalid.	Any participant irrespective of participatory interest (“Any”).
Receive information on activities of LLP and review its accounting and other documents.	Any.
Receive income from activities of LLP (generally, <i>pro rata</i> to its participatory interest).	Any.
In the case of liquidation of LLP, receive the value of the assets remaining after settlement with creditors, or upon agreement of all participants of LLP – part of such assets in kind (generally, <i>pro rata</i> to its participatory interest).	Any.
Cease its participation in LLP by transfer of its participatory interests.	Any, provided that its participatory interest has been paid in full (article 19.1 of LLP Law) and subject to pre-emptive rights of the existing participants.
Challenge in the court the decisions of corporate bodies of LLP violating its rights, including challenge of decisions of the GMP if the relevant participant did not attend the GMP or voted AGAINST relevant decision (article 50 of the LLP Law). The limitation period for such claims is six months from the moment the participant learnt/should have learnt about such decisions or from the moment of the relevant GMP if the participant was present at such GMP. The decision can be challenged: if it was adopted with violations of procedural requirements for convening GMP and voting established by the LLP Law, the charter and other internal documents of LLP; and/or if such decisions contradict the law or charter of LLP (article 50 of the LLP Law).	Any.
Pledge its participatory interest.	Any, provided that its participatory interest has been paid in full (article 19.1 of LLP Law).
Pre-emptive right in the case of sale by another existing participant of its participatory interest.	Any.

Rights	Required threshold
Demand damages from the participant who caused harm to LLP or its participants (article 34.1).	Any, <i>pro rata</i> to its participatory interest (if several participants would like to exercise their pre-emptive right) or in full (if other participants do not wish to exercise their pre-emptive right) (article 31.1 of the LLP Law).
Demand convening of the GMP by the executive body of LLP.	Participants holding 10 or more % of the total votes or several participants holding jointly 10 or more % of the total votes (“ <b>Major Participant</b> ”) (article 45.2 of the LLP Law).
Convene the GMP in the case the executive body failed to do so.	Major Participant (article 45.2 of the LLP Law).
Be notified on the proposed GMP 30 days prior to its date by the body convening the GMP (article 46.1 of the LLP Law).	Any.
Make suggestions on the agenda of the GMP no later than 10 days before the GMP date and challenge refusal in the court if it breaches its rights and interests.	Any.
Include certain questions to the agenda of the GMP no later than 10 days before the GMP date and challenge refusal in the court if it breaches its rights and interests.	Participant holding five or more % of the total votes or several participants holding jointly five or more % of the total votes (article 46.2 of the LLP Law).
Request from the body/person who convenes the GMP to provide drafts of the resolutions on all issues of the GMP agenda, copies of the documents to be discussed at the GMP and other documents indicated by the charter or internal documents of LLP (article 46.4 of the LLP Law).	Any.
Request to review financial statements of LLP together with relevant conclusion of internal audit committee (internal auditor) or independent auditors for the last three years, and minutes of the GMP, and receive extracts from the mentioned documents (article 46.4, article 47.8 of the LLP Law).	Any.
Demand secret voting at the GMP.	Participant or participants holding no less than one-fifth of the total votes (article 48.3 of the LLP Law).
Demand compensation of damages caused by the members of the executive body to LLP, members of internal audit committee of LLP (article 52.3 and article 57.6 of the LLP Law), damages caused by the members of the executive body to LLP and their relatives due to breach of conflict of interest rules provided by the LLP Law (article 55.3 of the LLP Law).	Any.
Demand to conduct audit of LLP at the expense of such participants (article 59.3).	Any.
In the case of separation or spin-off of LLP, to get participatory interest in each of the new LLPs equal to its participatory interest in the LLP that undergoes separation/spin-off (article 63.4).	Any.
In cases where the participant was not present on the GMP that approved reorganisation of LLP or voted against such approval, to demand buy out of its participatory interest by the participants who voted FOR such approval (article 66.1 of the LLP Law).	Any.
Request evaluation by independent appraiser of the charter capital of LLP and its correlation to own capital of LLP, at the expense of the relevant participant (article 25.2.1 of the LLP Law).	Any.
Other rights provided by LLP Law and constitutional documents (charter and the FA, if any) of LLP.	Any.

Table 3. Rights and powers of shareholders of the JSC

Rights	Required threshold
<ul style="list-style-type: none"> <li>■ Request convening an extraordinary GMS or apply to court with the same request in case of refusal of BoD to convene the GMS.</li> <li>■ Request convening of BoD meeting.</li> <li>■ Request audit of JSC to be carried out by audit organisation of its own choice at its own expense (article 14.2, article 78.2 of the JSC Law).</li> </ul>	Shareholder holding 10 or more % of the total voting shares or several shareholders acting based on the agreement under which they jointly hold 10 or more % of the total voting shares (the “ <b>Major Shareholder</b> ”) (article 1.23) of the JSC Law.
<p>Participate in management of JSC (by way of attending and voting at the GMS (article 14 of the JSC Law) or otherwise.</p> <p>Suggest to the BoD to include additional issues to the agenda of the proposed GMS, subject to certain requirements (article 43.1 of the JSC Law).</p>	<p>Any shareholder irrespective of amount of shares held (“<b>Any</b>”).</p> <p>Shareholder holding five or more % of the total voting shares or several shareholders holding jointly five or more % of the total voting shares (the “<b>5% Shareholder</b>”) (article 14.1.1-1) of the JSC Law).</p>
Receive dividends provided that JSC has net income (article 13.1 of the JSC Law) and to receive penalty in the case of overdue dividends payment (article 22.6 of the JSC Law).	Any.

Rights	Required threshold
Receive information about activity of JSC, including review of its financial statements.	Any.
Receive extracts from the register of shareholders of JSC kept by the Registrar.	Any.
Propose to the GMS candidates for election to the BoD members.	Any.
Challenge the decisions of corporate bodies of JSC in the court, including challenge of BoD resolution taken with violations of the JSC Law and the charter if such resolution has breached rights and interests of the relevant shareholder (article 58.8 of the JSC Law).	Any.
Claim in the court for damages from the officials of JSC (to be compensated to JSC) caused by the actions and/or omissions and return of income received by JSC officials and their affiliates as a result of making decisions (offering to make decisions) on approval of major transactions and interested party transactions. Claim in the court for damages from the officials of JSC (to be compensated to JSC) caused as a result of conclusion of the transaction between JSC and the third party if, at the moment of conclusion and/or performance of such a transaction, the official of the JSC acted in violation of Kazakh law, charter and internal documents of the JSC based on the agreement with such a third party. The official and the third party will bear joint and several liability to JSC for the damages caused (article 63.2 of the JSC Law).	5% Shareholder (article 14.1.7, article 63.2 of the JSC Law).
Apply to JSC with written requests about activities of JSC and receive motivated responses within 30 calendar days from date of receipt of request by JSC.	Any.
In the case of liquidation of JSC, to receive the property remaining after settlement of JSC's creditors' claims (generally, <i>pro rata</i> to its shareholding).	Any.
Pre-emptive right to purchase the shares or other securities of JSC convertible into shares in the case of initial placement, except cases stipulated by legislative acts of Kazakhstan.	Any.
Apply to the Registrar in order to join other shareholders for the purpose of taking decisions indicated in the proposed agenda of the GMS (article 41.4 of the JSC Law).	Minority shareholder, i.e. the shareholder who owns less than 10% of the voting shares of JSC (article 1.17 of the JSC Law).
Transfer and pledge its shares. In the case of pledge of the shares, the shareholder has a right to vote with the pledged shares and receive dividends on the pledged shares if it is otherwise not contemplated by the share pledge agreement (article 31.1 of the JSC Law).	Any.
Claim redemption (repurchase) of its shares by JSC in the following cases: (a) taking decision by the GMS on reorganisation of JSC if the relevant shareholder voted AGAINST the reorganisation of JSC; (b) taking decision by the GMS on delisting of JSC's shares if the relevant shareholder did not attend the GMS or voted AGAINST delisting; (c) decision on delisting of the shares by the organiser of trades (stock exchange); (d) if the shareholder does not agree with the GMS's decision on approval of major transaction and/or interested party transaction; and (e) taking decision that limits the shareholder's rights by the GMS if the relevant shareholder did not attend the GMS or voted AGAINST such decision (article 27 of the JSC Law). Be notified on the proposed GMS no later than 30 calendar days or, in the case of GMS <i>in absentia</i> or mixed GMS, no later than 45 calendar days before the date of the GMS. In the case of GMS <i>in absentia</i> , to receive the voting ballot no later than 45 days before the date of the GMS (article 41 of the JSC Law).	Any.
Have access to the materials on the agenda of the GMS at the location of the executive body of JSC no later than 10 days before the date of the GMS, and to request provision of such materials no later than three business days from the moment of the request (article 44.4 of the JSC Law).	Any.
In the case of disagreement with the resolution taken at the GMS, to refuse signing of the minutes of the GMS (article 52.4 of the JSC Law).	Major Shareholder.
Request to review the documents of the GMS including minutes, PoAs, etc. and request copy of the GMS meeting (article 52.5 of the JSC Law). Request other documents and receive copies no later than 10 calendar days from the moment of the request (article 80.3 of the JSC Law).	Any.

## 2.2 What responsibilities, if any, do shareholders have as regards the corporate governance of their corporate entity/entities?

Kazakh law does not contain any corporate governance-specific responsibilities of LLP participants/JSC shareholders. Such responsibilities can, however, be established by the charter and/or the FA of LLP.

## 2.3 What shareholder meetings are commonly held and what rights do shareholders have as regards them?

In both the LLP and GMS, annual (regular) and extraordinary meetings can be conducted.

The participants/shareholders are generally entitled to request convening of the GMP/GMS by the executive body/BoD, convene GMP itself (in cases established by law), participate and vote at the GMP/GMS, be notified on the GMP/GMS in the order provided by the law, request and receive information on the issues to be considered at the GMP/GMS, challenge GMP/GMS decisions that violate their right in court, etc. The rights of participants/shareholders are described in detail in question 2.1 above.

The exclusive competence of the GMP/GMS is listed in Table 4.

**Table 4.**

Decision	LLP	JSC
Amendments to the charter, and adoption of a new charter.	$\frac{3}{4}$	Simple majority.
Approval of the CGC and its amendment.	-	$\frac{3}{4}$
Adoption of a decision on the reorganisation and liquidation.	$\frac{3}{4}$	$\frac{3}{4}$
Formation and termination of the counting commission.	-	Simple majority.
Formation and termination of the BoD, and determination of terms of remuneration of the BoD.	-	Simple majority.
Adoption of a decision on the increase of the number of company's authorised shares or alteration of the type of unplaced authorised shares.	-	$\frac{3}{4}$
Determination of the company's auditor.	-	Simple majority.
Determination of terms of conversion/modification of securities.	-	Simple majority.
Formation and termination of the executive body.	Simple majority.	-
Adoption of a decision on the transfer of the company to the trust management.	Simple majority.	-
Formation of the supervisory board and internal audit committee, and approval of their decisions.	Simple majority.	Simple majority.
Approval of annual financial statements and distribution of dividends (net income).	Simple majority.	Simple majority.
Adoption of a decision on non-payment of dividends (under certain circumstances).	-	Simple majority.
Adoption of internal regulations (except for those which are adopted by other corporate bodies per the charter).	Simple majority.	Simple majority.
Adoption of decision on the participation in other companies (for JSC, in the amount of 25% or more of JSC's total assets).	Simple majority.	Simple majority.
Determination of the procedure for the disclosure to participants/shareholders of information on the company's activities.	Simple majority.	Simple majority.
Appointment of the liquidation commission and approval of liquidation balance sheets.	Simple majority.	Simple majority.
Adoption of a decision on the forced buy out of participatory interest in accordance with the LLP Law.	$\frac{3}{4}$ (when buying out participatory interest of a participant, said participant does not participate in voting (article 48.2 of the LLP Law)).	-
Adoption of a decision on the pledge of all the company's assets.	$\frac{3}{4}$	-
Adoption of a decision on the making of additional contributions to the company's property in accordance with the LLP Law.	Simple majority.	-
Approval of procedure and terms of providing information about activities of LLP to participants and prospective participants of LLP.	Simple majority.	-

Decision	LLP	JSC
Approval of transaction or several related transactions as a result of which LLP alienates (may alienate) property with the value of 51% or more of the total balance value of assets of LLP. Related transactions are: (a) several transactions carried out with the same person or group of affiliated persons in relation to acquisition or alienation of the same property; (b) transactions contemplated by one and the same agreement or several related agreements; or (c) other transactions recognised as related pursuant to charter or resolution of GMP.	Simple majority.	-
Decision on approval of a major transaction, as a result of which JSC alienates or may alienate property with the value of 50% or more of the balance value of JSC's total assets as of the date of such a decision.	-	Simple majority.
Approval of changes in methodology (or its approval if not already approved by constitutional meeting) of determination of value of shares at their redemption by JSC on a non-organised market.	-	¾
Approval of the agenda for the general meeting	-	Simple majority.
Introduction and annulment of the "golden share".	-	Simple majority.
Issuance of securities convertible into common shares of JSC.	-	Simple majority.
Decision on voluntary delisting of shares of JSC.	-	Simple majority.
Exchange of placed shares of one kind to another, and determination of conditions and procedure for such an exchange.	-	Simple majority.

## 2.4 Can shareholders be liable for acts or omissions of the corporate entity/entities?

Generally, participants/shareholders are not liable for acts or omissions of a legal entity, unless such is otherwise provided by legislative acts of Kazakhstan or constitutional documents of the legal entity.

The participants/shareholders can, however, be held liable for acts or omissions of the relevant legal entity in the following cases:

- (i) the bankruptcy of the LLP/JSC is caused by actions of its participants/shareholders. In such cases, participants/shareholders bear secondary liability towards creditors in case of insufficiency of assets of the legal entity (articles 44 and 94 of the Civil Code); and
- (ii) transactions concluded by the subsidiary company under influence of the parent company (article 94 of the Civil Code). In such cases, the parent company shall bear secondary liability for the performance of such transactions. In general, when one entity forms a major part of the charter capital of another company, the latter is deemed to be a "subsidiary". Alternatively, in cases where one entity has the ability to determine decisions taken by another company (by virtue of an agreement or otherwise), the latter is also deemed to be a subsidiary.

Also, shareholders who have not fully paid for their shares are jointly liable for the obligations of the company within the unpaid part of the value of their shares.

## 2.5 Can shareholders be disenfranchised?

Article 14.3 of the JSC Law specifically provides that limitation of the shareholders' rights (provided by section 1 and 2 of article 14 of the JSC Law) is prohibited. Article 42.2 of the LLP Law provides that provisions of the charter and any other documents and decisions limiting the rights of LLP participants to manage the LLP (by way of attendance, discussion of the issues of the agenda, and voting at the GMP) are invalid; however, the LLP Law is silent on the possibility to limit other rights of LLP participants. Our interpretation of the law suggests that the provisions of article 14.3 of the JSC Law shall

apply by analogy of law to LLPs. In addition, the rights of LLP participants other than the "right to manage LLP" cannot be limited.

In certain limited cases established by law, a participant/shareholder cannot vote on certain issues. For example, if the participant caused substantial damage to the LLP, the GMP is entitled to make decision on compulsory repurchase of such a participant's participatory interest. Such a participant cannot vote on the relevant GMP, and its votes are not considered in calculation of the votes (article 48.2 of the LLP Law).

## 2.6 Can shareholders seek enforcement action against members of the management body?

### 2.6.1 Enforcement against members of management body in LLP

*Liability for damages caused by improper management.* Any participant of the LLP can claim compensation of damages caused to the LLP by the members of an executive body in the court (article 52.3 of the LLP Law). The members of the executive body bear joint and several liability for the damages caused by joint improper management over the LLP.

In addition, the members of the executive body can bear secondary liability together with the LLP to the third parties for the damages caused by the bankruptcy (insolvency) of the LLP due to improper management of the LLP by the executive body (article 52.4 of the LLP Law).

The same liability towards the participants of LLP and third parties can apply to the members of the supervisory board for improper control over activity of the executive body (article 57.6 of the LLP Law).

The law, however, does not clarify what is meant by "improper management" of LLP or "improper control over activity of executive body".

*Liability for damages caused by breach of the conflict of interest.* Article 55 of the LLP Law imposes a prohibition on the members of the executive body of the LLP (and their relatives) to take certain actions that constitute conflict of interests of the LLP and executive body members. Additional prohibitions can be imposed by the charter of the LLP.

Any participant of the LLP can claim damages caused to the LLP by breach of such prohibitions by executive body members or their relatives.

The prohibitions imposed by article 55 of the LLP Law include: (a) conclusion with the LLP of transactions beneficial for executive board members/their relatives without consent of the GMP (e.g. loan, gift, sale and purchase, etc.); (b) acceptance of remuneration from the LLP or third parties for transactions concluded between the LLP and the third parties; (c) representation of interests of the third parties in their relations with the LLP; and (d) conduct of business activity that competes with activity of the LLP (article 55 of the LLP Law).

### 2.6.2 Enforcement against members of management body in JSC (article 63 of JSC Law)

The JSC Law imposes the rules for liability of officials of JSC. By “officials”, the JSC Law means members of the BoD, members of the executive body or the person who individually executes the functions of the executive body (article 1.160 of the JSC Law).

*Liability for damages.* The officials bear liability to JSC and its shareholders for harm caused by their actions and/or omissions, and for damages caused to the JSC including, but not limited to, damages caused by: (i) provision of misleading or false information; (ii) breach of order of provision of information established by the JSC Law; and (iii) offer to conclude and/or making a decision on conclusion of major transactions and/or interested party transactions that caused damages to the JSC due to dishonest actions and/or omissions, including the purposes of getting profit by such officials or their affiliates as a result of the mentioned transactions.

The Code on Administrative Violations of the Republic of Kazakhstan dated 5 July 2014 235-V No (article 263) and the Criminal Code of the Republic of Kazakhstan dated 3 June 2014 No226 – V (articles 225 and 250) imposes criminal liability for corporate governance-related violations and crimes.

*Relief of liability.* The officials (except the official who was interested in conclusion of the transaction that caused damages and who offered to conclude such a transaction by the JSC) can be relieved from liability if they voted AGAINST the approval of the transaction that caused damages to the JSC or its shareholders or if they did not participate in the voting “for respectful reasons”.

The official can also be relieved from liability for damages caused by a business decision if it can be proved that such an official acted properly in compliance with the principles of official conduct established by the JSC Law, based on proper information as of the moment of decision, and had reasonable grounds to believe that such a decision served best interests of the JSC.

Liability of the official who offered to conclude the relevant transaction or the official who dishonestly acted or omitted to act at the meeting of the relevant corporate body, cannot be lifted even if the mentioned transactions have been approved by the GMS in the cases required by law or the charter of the JSC if damages have been caused to the JSC as a result of such transactions.

*Claims of shareholders.* A 5% Shareholder (or the JSC itself based on relevant resolution of the GMS) are entitled to claim from the official in the court: (i) compensation of harm and damages caused to the JSC; and (ii) return to the JSC by the relevant official and/or its affiliates of the profit received as a result of approval (offer to approve) of major transactions and interested party transactions that caused damages to the JSC in case the relevant official acted dishonestly and/or omitted to act.

A 5% Shareholder (or the JSC itself based on relevant resolution of the GMS) are entitled to claim from the official and/or the third party in the court damages caused to the JSC as a result of conclusion of a

transaction with such a third party provided that, during conclusion and/or performance of such a transaction, the official in concert with the third party acted in violation of Kazakh law, charter and internal documents of the JSC or employment agreement of such an official. The official and the third party bear joint and several liability for damages.

Before going to the court, the 5% Shareholder who would like to claim damages, shall apply to the BoD for consideration of the issue of compensation of damages by the relevant official.

By taking decisions “dishonestly”, the JSC Law means taking a decision on conclusion (offer to conclude) of the major transactions and/or interested party transactions not in the interests of the JSC, with violation of the principles of official conduct established by the JSC Law, if such transactions caused to the JSC damages not covered by the standard commercial risk.

By “omission” the JSC Law means that the official abstained from making a decision on conclusion of the major transactions and/or interested party transactions that caused to the JSC damages not covered by the standard commercial risk, OR did not participate in the voting without “respectful reason”. The JSC Law does not clarify what reasons can be considered as “respectful” and does not establish the criteria of “standard business risk”.

## 2.7 Are there any limitations on, and disclosures required, in relation to interests in securities held by shareholders in the corporate entity/entities?

### 2.7.1 Limitations and disclosures in relation to the participatory interests in LLP

The law does not generally impose any limitations on the amount of participatory interests held by each participant of the LLP. Constitutional documents of the LLP can provide limitations with regard to the maximum size of participatory interest per one participant, but this limitation cannot be applied to the particular participant (article 28.3 of the LLP Law).

Kazakh law does not require public disclosure of information on participants and their participatory interests of the LLP, though such information can generally be obtained from the charter of the LLP that is normally publicly accessible.

Information on participants, each holding 5% or more of the charter capital of the LLP, shall be disclosed to investors in the investment memorandum or similar document in cases where debt securities issued by the LLP are listed on the KASE (annex 3 of section 3.5.1.1 of KASE Listing Rules).

### 2.7.2 Limitations and disclosures in relation to the shares in JSC

Legislative acts of Kazakhstan may establish limitations on: (i) transactions with shares of the JSC; (ii) the maximum number of shares of the JSC owned by one shareholder; and (iii) the maximum number of votes on shares granted to one shareholder; however, to the best of our knowledge, there are no such general restrictions in place as of today (article 12.5 of the JSC Law).

JSC shall place information on its major shareholders (holding 10% or more of the charter capital) on its corporate website and information on its affiliates (which include major shareholders) on the website of the so-called “depository of financial statements” that is the general source of disclosure of information on JSCs in Kazakhstan (article 79.2-2 of the JSC Law) (the “**Financial Statements Depository**”).

Listed JSCs shall disclose information on their shareholders each holding 5% or more of the total number of common or preferred shares on a quarterly basis (article 27.2 of KASE Listing Rules),

and the same information shall be disclosed in the investment memorandum or similar document related to the securities issued by the JSC and listed on the KASE (Annex 3 of section 3.5.1.1 of KASE Listing Rules).

In addition, listed LLPs and JSCs shall, within the period of securities circulation, disclose any changes in the composition of the participants (shareholders) holding 10% or more of the participatory interests (voting shares) to the NBK and the securities holders on the website of the Financial Statements Depository, and publication in mass media within 15 calendar days from the moment of such change has happened and on the website of KASE within the period established by the KASE (article 102.2.2 of the Securities Market Law).

### 3 Management Body and Management

#### 3.1 Who manages the corporate entity/entities and how?

*LLPs.* As mentioned above, in LLPs (1) the GMP/the sole participant is the supreme body that resolves the key issue referred to its exclusive competence, and can generally decide on any issue of the LLP (article 43.5 of the LLP Law), and (2) the executive body executes the operational day-to-day management of the LLP, except for the issues which are referred to the exclusive competence of other corporate bodies (article 52.1 of the LLP Law) and reports to the GMP. The GMP can transfer its competence provided by the charter (other than exclusive competence) to the executive body (article 52.2 of the LLP Law).

A supervisory board can be established to execute control over activities of an executive body of the LLP. The internal audit commission (internal auditor) consists of the participants and/or their representatives, and can be established for control over the financial and business activity of the executive body of the LLP. The internal audit commission is entitled at any time to check the financial and business activity of the LLP, and has unconditional access to all the documents of LLP. In addition, it can request explanations from the executive body.

*JSCs.* As mentioned above, in JSCs, the GMS or the sole shareholder is the supreme body of the JSC, resolving the issues which are referred to the exclusive competence of the GMS/the sole shareholder, and which cannot be transferred to the competence of any other corporate body of the JSC (article 92.3 of the Civil Code).

The BoD is the managing corporate body of the JSC that executes general management over activity of the JSC within its exclusive competence established by the JSC Law and the charter, that cannot be transferred to the executive body of the JSC (article 92.4 of the Civil Code). The BoD cannot resolve the issues that, under the charter of the JSC, are referred to the competence of the executive body and shall not make decisions that contradict the decisions of the GMS/the sole shareholder (article 53.4 of the JSC Law). The BoD shall have committees for consideration of the most important issues and preparation of recommendations to the BoD on such issues, namely: (i) strategic planning; (ii) HR and remuneration; (iii) internal audit; (iv) social issues; and (v) other issues as provided by the internal documents of JSC.

The head of the executive body cannot simultaneously be the head of the BoD committee. The members of the BoD shall execute their functions personally and cannot delegate their votes to any other person (article 54.1 of the JSC Law).

The executive body executes the operational day-to-day control over activities of the JSC and reports activity to the BoD and the GMS/sole shareholder. The executive body is entitled to make decisions on any matters of the JSC, which are not referred by the JSC Law, other legislative acts of Kazakhstan or the charter of the JSC to the exclusive competence of other corporate bodies of the JSC (article 59.1 of the JSC Law).

The internal audit service is mandatory for public JSCs. The internal audit service executes control over the financial and business activity of the JSC, and reports the activity to the BoD. Its members cannot be elected to the BoD and/or the executive body (article 61 of the JSC Law).

#### 3.2 How are members of the management body appointed and removed?

##### 3.2.1 Appointment/removal of management bodies' members in LLPs

In LLPs, the members of all corporate bodies are appointed and removed by the GMP resolution for a general term of five years. Members of the supervisory board cannot act simultaneously as a member of the executive body of the LLP (article 57 of the LLP Law). Members of the executive body cannot simultaneously act as members of the internal audit commission. They also cannot be the internal auditor (article 58 of the LLP Law).

##### 3.2.2 Appointment/removal of management bodies' members in JSCs

The BoD of a JSC shall be elected by the GMS/appointed by the sole shareholder from the following individuals: (i) shareholders; (ii) persons suggested (recommended) to be elected to the BoD as shareholders' representatives; and (iii) other individuals.

It is mandatory to have three BoD members. Not less than 30% out of the total number of BoD members shall be represented by independent directors.

The independent director is a member of the BoD, who: is not (and was not for the three preceding years) an affiliate of this JSC (except if they are an independent director of such a JSC); is not an affiliate of such a JSC; is not (and was not for the three preceding years) a subordinate to the officials of such a JSC; is not a public official; is not (and was not for the three preceding years) a representative of any shareholder at the GMS; and is not (and was not for the three preceding years) involved in the audit of such a JSC as an auditor of an audit organisation (article 1.20 of the JSC Law).

The members of the BoD shall generally be elected by so-called cumulative voting of the GMS using voting ballots. Cumulative voting uses a procedure where each share gives the number of votes equal to the number of candidates.

The members of the executive body (except its Chairman) cannot be elected as BoD members. The Chairman of the executive body of the JSC cannot be elected as the Chairman of the BoD.

A member of the BoD can be removed: (i) automatically when its term of office established by the GMS has expired; (ii) by resolution of the GMS on advanced termination of his authority; and (iii) at his own initiative upon written notification of the BoD.

The executive body and internal audit service (internal auditor) of the JSC is appointed and removed by the BoD (articles 53.2.8 and 53.2.10 of the JSC Law). Members of the executive body can work in other organisations only with BoD consent. Internal audit service employees cannot be elected to the BoD and/or the executive body of the JSC (article 61 of the JSC Law).

### 3.3 What are the main legislative, regulatory and other sources impacting on contracts and remuneration of members of the management body?

Kazakh law does not contain specific regulation on remuneration of the members of management bodies of Kazakh legal entities (including LLPs and JSCs); therefore, general provisions of the Labour Code shall be applicable.

### 3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

Under Kazakh law, there is no limitation and no specific disclosure requirement in relation to the interests in securities held by members of the management body in the corporate entity.

### 3.5 What is the process for meetings of members of the management body?

It is important to strictly comply with the process for meetings of members of the management body established by law since non-compliance can lead to invalidation of the relevant resolution.

**Table 5. GMP/GMS**

Issue	LLP	JSC
Corporate bodies having right to convoke an annual/regular general meeting.	Executive body.	BoD.
Corporate bodies/persons having right to convoke an extraordinary general meeting.	Executive body; supervisory board; internal audit committee (internal auditor); and the Major Participant.	BoD, the Major Shareholder (article 37 of the JSC Law).
Notification of participants/shareholders.	30 days prior to the GMP.	30 calendar days (45 calendar days in case of an "meeting in absentia") prior to the GMS.
Voting.	Each participant has a number of votes <i>pro rata</i> to its share of interest in charter capital (it is possible to distribute voting power differently, if provided so in the charter).	One share = one vote (with few exceptions) (article 50.1 of the JSC Law).
Representation.	Members of the executive and control bodies of LLP cannot act as representatives of participants at GMP meeting, except cases where the relevant participant is himself/herself a member of the executive or control body.	Members of the executive body of JSC cannot act as representatives of shareholders at the GMS meeting. Employees can act at the GMS meeting as representatives of shareholders only if the relevant PoA contains express instructions on how they shall vote on each item of the agenda (article 47 of the JSC Law).
Quorum.	More than half of the total votes is present at the meeting unless a qualified majority or unanimity is required to take decisions as per agenda (in this case, more than 2/3 of votes is required).	50% or more out of total voting shares; at least 40% of voting shares for the repeated GMS; and at least 15% of voting shares if the number of shareholders of JSC is 10,000 or more.
Limitations.	Members of the executive body are not entitled to a chair at GMP unless all presented participants are members of the executive body or internal audit committee.	Members of the executive body are not entitled to a chair at the GMS meeting unless all presented shareholders are members of the executive body (article 48.4 of the JSC Law).
Secret voting.	Permitted if provided by charter, internal documents of LLP or is required by the participants jointly holding no less than one-fifth of the total votes.	Permitted.
Meeting <i>in absentia</i> .	In cases provided by the charter and upon express consent of more than 3/4 out of the total votes. Certain questions cannot be resolved through voting <i>in absentia</i> (e.g. change of LLP's charter, liquidation and reorganisation of LLP, pledge of all property of LLP, etc.).	In cases provided by the charter. Mixed voting is possible.
Counting commission.	N/A.	Mandatory if the number of shareholders of JSC is 100 or more, otherwise its functions (generally, stating the quorum and counting of votes) shall be performed by the corporate secretary (article 46 of the JSC Law).

Table 6. BoD Meeting

Issue	Rule
Corporate bodies having right to convoke BoD meetings.	BoD Chairman, executive body or per request of any member of BoD, internal audit service, external audit organisation, the Major Shareholder (article 57 of the JSC Law).
Notification of participants/ shareholders.	Provided by the charter.
Voting.	Each member has one vote. BoD Chairman's vote has a decisive power in the case of equal votes.
Representation.	Shall present personally.
Quorum.	Determined by charter of JSC but in any case shall be at least half of all BoD members. In case of public JSC, at least half of the total independent directors shall be present.
Meeting <i>in absentia</i> .	In cases provided by the charter.

The process for meetings of other management bodies of LLP/JSC shall be established by charter or other internal documents.

### 3.6 What are the principal general legal duties and liabilities of members of the management body?

See question 3.1 above.

### 3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

*LLPs.* The key corporate governance responsibility of LLP executive body members is to refrain from actions that, according to the LLP Law, constitute a conflict of interest. See question 2.6 (point 2.6.1) for details.

Further, there is a general obligation of members of an executive body of the LLP to act reasonably and in good faith in execution of their functions (article 51.2 of the LLP Law).

*JSCs.* The key corporate governance responsibility of JSC officials (members of the BoD, members of executive body or the person who individually executes the functions of the executive body (article 1.160 of the JSC Law) is to comply with the principles of the activity of JSC officials (article 62 of the JSC Law). Under these principles, the official shall, *inter alia*: carry out their duties in good faith, via means that reflect the interests of the JSC and shareholders to the fullest extent possible; not use the property of the JSC for personal reasons; not abuse their position in transactions with their affiliates; and control disclosure, etc.

In addition, members of the BoD shall: act in accordance with the law and constitutional documents based on the principles of awareness and transparency and in the interests of JSC and its shareholders (article 62.2.1 of the JSC Law); treat all shareholders fairly and make unbiased and independent estimates with regard to any corporate issues (article 62.2.2 of the JSC Law); track and, if possible, eliminate potential conflicts of interest (article 53.6.1 of the JSC Law); and execute control over efficiency of corporate governance practice in the JSC (article 53.6.2 of the JSC Law).

### 3.8 What public disclosures concerning management body practices are required?

On its website, a listed JSC shall disclose information on the members of management bodies of the JSC, who combine their position in the JSC with a management position or another main activity in another legal entity. Such information shall include information on the authority and liabilities in such other legal entity (article 79.2-2 of the JSC Law).

On the website of the Financial Statements Depository, a JSC shall disclose information on the total remuneration of the members of its executive body as of the end of the relevant year (article 79.2-2 of the JSC Law).

Other disclosure requirements are described in section 4 below.

### 3.9 Are indemnities, or insurance, permitted in relation to members of the management body and others?

Indemnity and insurance in relation to members of the management body and other officials of a legal entity are not legally prohibited. However, please note that they are not well-developed in practice in Kazakhstan. It shall be noted that Kazakh law does not recognise the concept of indemnity generally, and it is not clear how the relevant rights and obligations of the parties will be enforced in Kazakhstan.

## 4 Transparency and Reporting

### 4.1 Who is responsible for disclosure and transparency?

According to the LLP Law, generally, the LLP itself is responsible for disclosure of information to its participants and other parties. In practice, however, it is the executive body of the LLP that is responsible for such disclosure.

In JSCs, the officials (members of BoD and executive body) are responsible for disclosure and provision of information on the JSC's activity in accordance with Kazakh law (article 62.1.4 of the JSC Law).

### 4.2 What corporate governance related disclosures are required?

Table 7. LLP Disclosure

Disclosure requirement	Not listed LLP	Listed LLP (LLP cannot issue equity securities, so by "listed" LLP's debt securities' listing is meant)
Reduction of charter capital (article 37 of the LLP Law).	+	+
Initiation of a corporate dispute, to be disclosed to all participants of LLP by its executive body (article 60-1 of the LLP Law).	+	+
Proposed merger, accession, dissolution or spin-off of LLP (articles 62,63 of the LLP Law).	+	+

Disclosure requirement	Not listed LLP	Listed LLP (LLP cannot issue equity securities, so by “listed” LLP’s debt securities’ listing is meant)
Financial statement for the relevant year in cases where such disclosure is specifically required by law in relation to LLPs performing certain types of business activity.	+	+
Register of affiliates (article 12-2 of the LLP Law).	+	+
Corporate Events Information (as defined below).	-	+, shall be disclosed to KASE for publication on the KASE website.
Information on Changes (as defined below).	-	Same as above.
Quarterly and annual financial statements and relevant auditor’s report.	-	Same as above.

Table 8. JSC Disclosure

Disclosure requirement	Not listed JSC	Listed JSC
Resolution of BoD on concluding a major transaction (generally, the transaction for disposal/acquisition of the property with the value of 25% to 50% out of the JSC’s total assets) shall be published in mass media in Russian and Kazakh languages within three business days from the date of resolution (article 70.1 of the JSC Law). Failure to publish such information may lead to invalidation of the relevant major transaction.	+, shall be published in mass media (including paper or corporate website or other website, see the Mass Media Resolution) and Financial Statements Depository website.  Publication on the Financial Statements Depository website will at the same time satisfy the mass media publication requirement.  Mass Media Resolution means resolution of the Management Board of the Agency of the Republic of Kazakhstan for Regulation and Supervision of Financial Market and Financial Organisations No 311 dated 27 August 2005 “On Mass Media Used for Publication of Information on Activity of JSC, and Requirements Thereto”.	+, shall be published in mass media (including paper or corporate website or other website; see the Mass Media Resolution) and Financial Statements Depository website.  Publication on the Financial Statements Depository website will at the same time satisfy the mass media publication requirement.
Annual consolidated or non-consolidated financial statements and auditors’ report (article 76.4 of the JSC Law).	+, same as above.	+, shall be published in mass media (including paper or corporate website or other website; see the Mass Media Resolution), Financial Statements Depository website and KASE website.  Publication on the Financial Statements Depository website and/or KASE website will at the same time satisfy the mass media publication requirement.
Within 10 business days from the moment of relevant resolution, information on payment/non-payment of dividends on common shares of JSC (articles 23.1 and 23.2 of the JSC Law). Public JSC shall additionally publish such information on its corporate website.	+, same as above.	+, same as above.
Five business days prior to payment of dividends on preferred shares of JSC, information on such payment (article 24.3 of the JSC Law).	+, shall be published in mass media (including paper or corporate website or other website; see the Mass Media Resolution).	+, shall be published in mass media (including paper or corporate website or other website; see the Mass Media Resolution) and Financial Statements Depository website.  Publication on the Financial Statements Depository website will at the same time satisfy the mass media publication requirement.

Disclosure requirement	Not listed JSC	Listed JSC
Announcement of JSC on repurchase of its placed shares (article 26.4 of the JSC Law).	+, shall be published in mass media (including paper or corporate website or other website; see the Mass Media Resolution).	+, shall be published in mass media (including paper or corporate website or other website; see the Mass Media Resolution) and Financial Statements Depository website. Publication on the Financial Statements Depository website will at the same time satisfy the mass media publication requirement.
Announcement on reorganisation of JSC (articles 82.7, 84.5, 85.6 of the JSC Law).	+, shall be published in mass media (including paper or corporate website or other website; see the Mass Media Resolution).	+, shall be published in mass media (including paper or corporate website or other website; see the Mass Media Resolution) and Financial Statements Depository website. Publication on the Financial Statements Depository website will at the same time satisfy the mass media publication requirement.
Corporate Events Information (as defined below).	+, Financial Statements Depository website.	+, Financial Statements Depository website and KASE website (article 79.2-2 of the JSC Law, article 3 of the Resolution on Financial Statements Depository).
List of affiliates of JSC (quarterly).	+, Financial Statements Depository website.	+, Financial Statements Depository website.
Information on the total remuneration of the members of JSC's executive body as of the end of the relevant year.	+, Financial Statements Depository website.	+, Financial Statements Depository website.
During the period of circulation of its securities (shares, bonds, etc.) – Information on Changes as defined below.	+, Financial Statements Depository website.	+, Financial Statements Depository website and KASE website.
Quarterly financial statements.	-	+, Financial Statements Depository website and KASE website.
Information on its Major Shareholders.	-	+, corporate website of public JSC.
Information on members of management bodies of JSC who combine their position in JSC with management position or another main activity in another legal entity. Such information shall include information on authority and liabilities in another legal entity (article 79.2-2 of the JSC Law).	-	+, corporate website of public JSC.
In relation to public JSC only: Corporate Events Information indicated in items (1), (3), (4),(6),(7),(8),(9),(11) and (12) above and charter, CGC, audited annual financial statements for two latest financial years, other internal documents regulating corporate governance questions including the activity of BoD and its committees, corporate secretary activity and public JSC audit issues (article 4-1.2-1 of the JSC Law).	N/A.	+, corporate website of public JSC.

Information on Changes includes: (1) change in composition of corporate bodies; (2) change of Major Shareholder/Major Participant; (3) reorganisation or liquidation of the issuer, its subsidiaries and dependent joint stock companies; (4) arrest on the property of the issuer; (5) pledge (re-pledge) of the issuer's property with a value of 10% or more of the issuer's total assets; (6) obtaining, suspension or termination of the licence of the issuer; (7) resolutions taken by the GMS (GMP) of the issuer; (8) resolutions taken by the BoD on the issues that shall, according to internal documents of the JSC, be disclosed to its shareholders and investors; (9) changes in the list of organisations in which the issuer owns 10% or more of shares (participatory interests); (10) changes to the prospectus of emission securities issued by the issuer; and (11) information on non-compliance by the issuer with the conditions contemplated by the prospectus of bonds issuance and defaults of the issuer.

Corporate Events Information includes: (1) GMS resolutions; (2) BoD resolutions on the list of issues to be disclosed to shareholders and investors of the JSC in accordance with its internal documents;

(3) issuance of shares and other securities and approval by the NBK of reports on placement and redemption of such securities, cancellation of the securities by the NBK; (4) execution of major transactions and related party transactions (information on the transaction, as a result of which the JSC acquires or alienates property in the amount of 10% or more of the JSC's assets) should include information on the parties of transaction, assets being acquired or disposed, the terms and conditions of the transaction, the nature and scope of interests of persons involved, as well as other information on the transaction; (5) pledge (re-pledge) of property of the JSC in the amount of 5% and more of the JSC's total assets; (6) getting a loan by the JSC in the amount of 25% and more of the own capital of the JSC; (7) obtaining permits required for the performance of certain activities or suspension/termination of permits previously obtained by the JSC; (8) participation in the establishment of a legal entity; (9) seizure of property of the JSC; (10) occurrence of cases of emergency, as a result of which the JSC's property was destroyed in the amount of 10% and more of total balance sheet assets of the JSC; (11) bringing the JSC and its officials to administrative

liability; (12) initiation of court proceedings on corporate dispute; (13) decision on forced reorganisation of the JSC; and (14) other events affecting the interests of the JSC's shareholders and investors in accordance with the charter of the JSC and prospectus of shares.

#### 4.3 What is the role of audit and auditors in such disclosures?

The audit and auditors do not play any specific role in corporate governance disclosure.

Annual financial statements of all JSCs shall be mandatorily audited (article 78.1 of the JSC Law); financial statements of LLPs shall be mandatorily audited only in cases specifically prescribed by law (article 59.1 of the LLP Law).

#### 4.4 What corporate governance information should be published on websites?

Please see the answer to the question 4.2 above.



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Marina focuses her practice on a wide range of finance and M&A transactions, including project finance and capital markets, infrastructure transactions, and workouts and restructurings in many industries.

## 5 Miscellaneous

#### 5.1 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Kazakh legislation does not specifically regulate corporate social responsibility.

#### 5.2 What, if any, is the role of employees in corporate governance?

The employees do not generally play any significant role in the corporate governance of a Kazakh legal entity.



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