



GRATA
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**MAJOR KAZAKHSTAN LEGISLATION
CHANGES FOR 2019**

Banks & Finance Team
GRATA International

GRATA International banking and finance team is pleased to provide you with a brief summary of the major changes to the legislation of the Republic of Kazakhstan in 2019 that may affect your business

Legislative Novelties In Kazakhstan in 2019:

In 2019, the process of making important amendments to the legislation of Kazakhstan, including banking and financial laws, continued.

The financial regulator (the National Bank of the Republic of Kazakhstan) was reorganised by spin-off of a new body which would now be responsible for regulating the financial market and its subjects.

The amendments that have been made fundamentally change the microcredit market in Kazakhstan, restrict the activities of foreign insurance brokers and provide for additional requirements for local insurance brokers.

Amendments also affected the state and quasi-state sector– a moratorium on the establishment of companies with state participation has been introduced, significant amendments to the legislation on public procurement have been made.

The new Currency Regulation Law was adopted, which significantly affects the regulation of activities of branches and representative offices of foreign companies and local currency market entities.

Along with tightening regulation in the financial sector and the foreign exchange market, the state continued improving the investment climate, in particular, the new Law on Special Economic and Industrial Zones was adopted, and new options were introduced for creditors of insolvent companies.

GRATA International Banking and Finance Team is glad to present a brief summary of the main legislative amendments in 2019 that may affect your business.

Please feel free to contact us if you have any questions, we will be happy to answer them.

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CREATING A FINANCIAL REGULATOR (FMRA - FINANCIAL MARKET REGULATION AGENCY)

- On 1 January 2020, the Agency of the Republic of Kazakhstan for Regulation and Development of the Financial Market (the "**FMRA**") was established¹. The FMRA that has been separated from the National Bank of the Republic of Kazakhstan (the "**National Bank**") is a state authority of the Republic of Kazakhstan directly subordinated and accountable to the President of the Republic of Kazakhstan.
- The main objective of the FMRA is to regulate and develop the financial market and its subjects, as well as protect the interests of financial services consumers. The National Bank will retain currency regulation and operating the state monetary policy.

MICROCREDIT MARKET REFORM

- From 1 January 2020, the Law of the Republic of Kazakhstan "On Introduction of Amendments to Some Legislative Acts of the Republic of Kazakhstan on the Regulation and Development of Financial Market, Microfinance Activities and Taxation" No. 262-VI dated 3 July 2019 adopts amendments that will dramatically change Kazakhstani microcredit market.
- From 1 July 2020, individual entrepreneurs and legal entities are prohibited from lending money to citizens and relevant agreements are null and void. This prohibition does not apply in cases specified by Article 715.2 of the Civil Code of the Republic of Kazakhstan (agreements, which execution is associated with the transfer of money or things with generic features, under which a loan is provided, including as an advance, prepayment, deferral and instalment payment of goods (works and services)), as well as in cases, when money is provided in the form of bank loans and microcredits in accordance with the laws of the Republic of Kazakhstan, a loan by an employer to its employee or a pensioner, who previously was employed by this employer, as well as a loan by a legal entity to its founder (shareholder, participant).
- According to our interpretation, this prohibition is aimed at restricting activities of individual entrepreneurs and legal entities that have provided loans without a bank license and a microfinance organisation status within entrepreneurial activity² (i.e. persons who provided loans specifically for the income generating purpose). Thus, notwithstanding the prohibition introduced, the provision of a loan by one individual to another not as entrepreneurial activity (for instance, without interest) may not be deemed null and void.
- Thus, from 1 January 2020, along with microfinance organisations (the "**MFO**")³, the financial regulator in the area of microcredit - the FMRA will regulate the activities of credit partnerships, pawnshops and legal entities that provide online loans. Accordingly, from 1 January 2020, all the restrictions and requirements established by the financial regulator in the area of microcredit, including prudential standards, as well as the obligation to provide the borrower's details to the

¹ The Decree of the President of the Republic of Kazakhstan "On Further Improvement of the State Administration System of the Republic of Kazakhstan" No. 203 dated 11 November 2019

² Pursuant to Article 2.1 of the Business Code of the Republic of Kazakhstan, entrepreneurship (business activity) is an individual, initiative activity of citizens, oralmans and legal entities **aimed at income generating** by using property, production, selling goods, performing works and services, and based on the private property right (private business) or the right of economic management or operative control of state enterprise (state business)

³ In addition to regulating the activities of other financial organisations such as banks, insurance companies, etc., which the FMRA also regulates, we, however, do not mention them in this section, since it is devoted specifically to regulating the microcredit market.

credit bureau, etc. will apply to all the organisations mentioned above not only to MFO as it was before. These amendments are aimed at further protection of the borrowers' interests and increase of transparency in performing microcredit activities.

- All organisations that provided loans prior to the enactment of the above law (except for MFO, credit partnerships and pawnshops) are required to re-register as MFO and to perform the record registration with the FMRA by 1 July 2020.
- The maximum amount of microcredit was increased from 8,000 MCI to 20,000 MCI. This increase is expected to allow involving medium and large businesses in the area of microcredit services.
- The list of activities allowed for organisations engaged in microfinance activities was expanded. In addition to providing microcredits, they can now, for instance, invest own assets in securities and other financial instruments, exist in a form of a joint stock company, issue bonds (for the purpose of their placement in the Republic of Kazakhstan or on the AIFC exchange⁴), assign rights of claim under a microcredit agreement. These amendments are aimed at facilitating the funding of organisations engaged in microfinance activities.
- The minimum charter capital for MFO was increased. Its gradual increase up to 100 million tenge is planned from 1 January 2020 to 1 July 2022.
- A new ratio, namely, the debt burden ratio of borrowers (the "DBR") was introduced. The maximum DBR value is 50%, so the debt burden shall not exceed 50% of the total official income of the borrower. Currently, DBR only applies to unsecured consumer loans to individuals.
- A ban was introduced on the collection by MFO of commissions and other payments related to the provision and servicing of microcredits; it is only possible to accrue interest on a microcredit and charge penalties for violation of obligations.
- A new formula was established for calculating the annual effective rate of return (the "AERR"). At the same time, the limit on the AERR maximum size of 56% stays unchanged.
- The amendments also established the requirements for MFO participants (shareholders). For instance, a person that has a registration, place of residence or location in one of the offshore jurisdictions (the list of which is established by the financial regulator) from 1 January 2020 cannot independently or indirectly own and (or) use and (or) dispose of participatory interests in the charter capital or placed shares of MFO.

DEVELOPMENTS IN THE INSURANCE LEGISLATION⁵

- The main amendment in the legislation on insurance activities is the introduction of an additional restriction on the transfer of insurance risks to reinsurance of a non-resident reinsurance organization from 16 December 2020.
- According to this restriction, a Kazakh insurance company may transfer insurance risks for reinsurance by a foreign organisation through a non-resident insurance broker or its branch only

⁴ Astana International Financial Centre

⁵ The Law of the Republic of Kazakhstan "On Introduction of Amendments to Some Legislative Acts of the Republic of Kazakhstan on Insurance and Insurance Activities, and Securities Market" No. 166-VI

provided that such a non-resident insurance broker has a subsidiary in the Republic of Kazakhstan that operates as an insurance broker under a license issued by a competent authority.

- Please note that such a subsidiary shall be obliged to submit a report on reinsurance agreements concluded with Kazakhstani insurance (reinsurance) organisations through the intermediary of its parent organisation. In other words, now if non-resident brokers in the Republic of Kazakhstan want to continue working directly with Kazakhstan insurers, they must open a subsidiary in the Republic of Kazakhstan, which must obtain an appropriate license.
- In addition, from 1 January 2019, the license of an insurance broker, which was previously unified, is now divided into two main types of brokerage activity - the conclusion of insurance agreements and the conclusion of reinsurance agreements.
- There are also new requirements for the minimum size of the charter capital and minimum size of the equity capital of an insurance broker depending on the type of brokerage license⁶.
- Until 1 July 2021, the minimum amount of the charter capital of a newly created insurance broker is 20,000 MCI under a license for the right to perform insurance brokerage for concluding insurance agreements and 100,000 MCI under a license for the right to perform insurance brokerage for concluding reinsurance agreements.
- From 1 July 2021, the above minimum amount of the charter capital will apply not only to newly created, but also to the existing insurance brokers (i.e., existing insurance brokers shall, if necessary, increase their charter capital to the specified amount by 1 July 2021).
- From 1 May 2019, the minimum amount of equity of an insurance broker is at least 10,000 MCI for an insurance broker concluding insurance agreements and 80,000 MCI for an insurance broker concluding reinsurance agreements.
- When combining types of brokerage activities, the minimum amounts of charter and equity capital of an insurance broker shall not be less than the amount established for activities of an insurance broker engaged in brokering reinsurance agreements.

CHANGES IN CORPORATE LAWS

- The Law of the Republic of Kazakhstan “On Limited and Additional Liability Partnerships” No. 220-I dated 22 April 1998 (the “**LLP Law**”) was amended so that the moment of emergence of the participant’s right to the participatory interest in the partnership is now clearly defined. This moment is the re-registration of the partnership due to the change in the composition of its participants or the introduction of relevant changes to the register of participants, if any⁷.
- The LLP Law was amended to clarify that the distribution of the partnership’s net income between its participants shall be based on the results for the quarter, half year, and year. The previous version of the LLP Law provided for the reference to the distribution of net income based on the

⁶ The Resolution of the Board of the National Bank “On Establishing Requirements for the Minimum Size of the Charter and Equity Capital of an Insurance Broker, Approving the Rules for the Implementation of Activities of an Insurance Broker” No. 270 dated 29 October 2018

⁷ Article 37-1 of the LLP Law

annual results, which raised the question of whether the partnership can distribute net income during the year, or it must wait until the end of the year and only then distribute the net income⁸.

- The general meeting of participants is now entitled to approve neither the annual financial statements, nor any financial statements, without the opinion of the audit commission (auditor) or the audit report.
- A number of clarifying amendments were introduced to the Law of the Republic of Kazakhstan “On Joint Stock Companies” No. 415-II dated 13 May 2003 (the “**JSC Law**”). For instance, the amendments clarify that the company shall provide its shareholders with information, such as, for example, a notification on a major transaction through publication on the website of the financial statements depository (the “**FSD**”) (the previous version required publication in the media). Publication on a major transaction in the media or on the company’s website no longer satisfies the requirement for publication on a major transaction (publication can be made on the FSD website only)⁹.
- In the absence of information on the shareholder’s current details with the company or in the system of registers of securities holders, dividends must be paid to an account opened with the central depository to register unclaimed money (in the previous version, dividends were not paid before such shareholder filed an application with supporting documents)¹⁰.
- Pursuant to the amendments, the provision on the mandatory offer on share redemption from existing shareholders of a company by a person who, alone or together with its affiliates became the owner of thirty or more percent of the company’s voting shares, does not apply in the following cases:
 - if the person complied with the above rule, and then acquired shares from its affiliates (holding in aggregate with this person thirty or more percent of the voting shares of the company and indicated in the previously sent notice to the company);
 - if a person complied with the above rule, and then its affiliate (specified in the notice previously sent to the company and holding in aggregate with this person thirty or more percent of the voting shares of the company) acquired the shares of the company from another affiliate (specified in the notice previously sent to the company, and holding in aggregate with the said person thirty or more percent of the company’s voting shares).
- A new rule was introduced, under which a person, who alone or together with its affiliates became the owner of ninety-five or more percent of the voting shares of the company, within sixty business days after the date of redemption, shall be entitled to request the remaining shareholders of the company to sell the voting shares of the company. The remaining shareholders shall be obliged to sell their voting shares within a period of not more than sixty calendar days after the date of publication of the request on the FSD Internet resource¹¹.
- According to the amendments made in April 2019, the decision to conclude an interested party transaction by the company shall be made by a simple majority of the board of directors, who are not interested in the transaction, unless the standard terms of such a transaction have been

⁸ Article 40 of the LLP Law

⁹ Article 70 of the JSC Law

¹⁰ Articles 23, 24 of the JSC Law

¹¹ Article 25-1 of the JSC Law

approved by the company's board of directors. Thus, if the board of directors has approved the standard terms of the transaction in advance, there is no need to additionally approve the interested party transaction by the board of directors¹².

CHANGES IN THE REHABILITATION AND BANKRUPTCY LAWS

- From April 2019, the Law of the Republic of Kazakhstan "On Rehabilitation and Bankruptcy" No. 176-V dated 7 March 2014 (the "**Bankruptcy Law**") was supplemented with a provision, according to which satisfying the claims of secured creditors, in addition to receiving the amount received from the sale of collateral property, may be implemented by taking collateral in kind¹³.
- If the register of creditors' claims contains the claims of a secured creditor, the interim administrator shall, within five business days from the moment the debtor is declared bankrupt, send to the secured creditor a proposal to accept the collateral in kind or to sell it itself, outside of bankruptcy estate realisation.
- In the absence of a response from the secured creditor to the above proposal within ten business days, the collateral shall be included in the bankruptcy estate. In this case, the claims of the secured creditor shall be subject to satisfaction on a second-priority basis.
- In case the secured creditor agrees to sell the collateral independently, the interim administrator shall not include the collateral in the bankruptcy estate and shall remove the claims of such a creditor from the register of creditors' claims.
- The secured creditor shall sell collateral in accordance with the [Civil Code](#) of the Republic of Kazakhstan and (or) [the Law](#) of the Republic of Kazakhstan "On Mortgage of Real Property", while the deadline for the sale of collateral shall not exceed six months from the day when the secured creditor consented to sell the collateral.
- The secured creditor shall notify the bankruptcy manager of the sale amount of the collateral no later than ten calendar days from the date of its the sale.
- If the collateral is not sold within the time period indicated above, it shall be included by the bankruptcy manager in the bankruptcy estate, and the claims of the secured creditor shall be included in the register of creditors' claims and must be satisfied on a second-priority basis.
- If the amount of proceeds from the sale of collateral less the expenses associated with such a sale exceeds the amount of claims of the secured creditor, such a difference shall be returned to the bankruptcy estate no later than thirty calendar days from the date of the sale.
- If the amount of claims of the secured creditor exceeds the amount of the proceeds from the sale of collateral less the expenses associated with such a sale, the claims of the secured creditor in the amount of the difference shall be included in the register of creditors' claims and must be satisfied on a fourth-priority basis.

PUBLIC PROCUREMENT LAW

¹² Article 73 of the JSC Law

¹³ Article 90 of the Bankruptcy Law

- From 1 January 2019, the Law of the Republic of Kazakhstan “On Public Procurement” (the “**Public Procurement Law**”) was amended to improve the public procurement legislation.

Exempting from the Public Procurement Law the procurements made using proceeds of the income received from provision of services to non-residents of the Republic of Kazakhstan

- Now, public customers can make public procurement of goods, works and services **at the expense of income obtained from the provision of services to non-residents** without observing the Public Procurement Law (without a tender, etc.), within the framework of civil law. Procurements made in whole or in part at the expense of the budgetary and own funds of the customer still have to be performed in compliance with the Public Procurement Law.

Exempting from the Public Procurement Law procurements made as part of investment projects financed by international organisations or other foreign banks

- From 1 January 2019, the Public Procurement Law DOES NOT apply to goods, works and services purchased in the course of the implementation of investment projects:
 - (a) funded by international organisations, to which Kazakhstan is a member; and
 - (b) for more than 50% funded by foreign banks, subject to certain conditions, in particular:
 - **a high credit rating of a foreign bank (not lower than A- according to Standard&Poor’s or a similar rating),**
 - **implementation of the investment project by certain entities (state enterprises, legal entities, where fifty or more percent of voting shares (interests in the charter capital) belong to the state and their affiliates), as well as**
 - **absence of a state guarantee and liens on the borrower’s assets during the implementation of the investment project.**

Introduction of the concept of “centralised procurement”

- From 1 January 2019, the concept of “centralised procurement” was introduced that means procurement made by [the unified public procurement organisers](#) (the Public Procurement Committee of the Ministry of Finance of the Republic of Kazakhstan).
- Pursuant to Article 8.1 of the Public Procurement Law, the list of goods, works and services that shall be procured by a unified public procurement organiser are determined by the competent authority (the Ministry of Finance)¹⁴. Previously, such purchases were carried out according to the budget programs or according to the list approved by the relevant Akimat.

Change in qualification requirements for a potential supplier

- From 1 January 2019 to 1 July 2019, in order for a potential supplier to participate in public procurement, such potential supplier still had to be “solvent” and should have been generally free from tax debt. However, there have been permitted level of tax debt of the potential supplier

¹⁴ The Order of the Minister of Finance of the Republic of Kazakhstan “On Determination of the Lists of Goods, Works, Services, for which Public Procurement is Carried Out by the Unified Public Procurement Organiser” No. 1127 dated 29 December 2018

which should have not exceeded 6 MCI (previously even 1 tenge tax debt was not allowed (Article 9.2 of the Public Procurement Law).

- From 1 July 2019, the qualification requirement of “solvency” is replaced by the qualification requirement of “financial stability” of a potential supplier. The financial stability of potential suppliers will be determined by categorising them in the procedure determined by the public procurement rules. The requirement of no tax debt of more than 6 MCI will stay in effect.
- From 1 January 2019, a potential supplier, in addition to material and labour resources, must also have financial resources (as we understand this requirement implies the availability of funds in bank accounts) (Article 9.4 of the Public Procurement Law).

The register of qualified potential suppliers was abolished and the register of complaints was introduced

- From 1 July 2019, the register of qualified potential suppliers is abolished.
- From 1 January 2019, the register of complaints will be introduced (Article 12 of the Public Procurement Law). The register of complaints represents a list of complaints of potential suppliers and suppliers filed through the public procurement web portal to the competent authority and contains information on decisions taken and instructions (notifications) issued as a result of complaints consideration (Article 12.11 of the Public Procurement Law).

Public Procurement Web Portal Became Fee-Based

- From 1 January 2019, the fee for the use (access) by potential suppliers of (to) the public procurement web portal was introduced. The fee is charged by a single operator in the area of public procurement (Electronic Finance Centre JSC) upon approval of the competent authority (the Ministry of Finance). In this case, the price of services for the use (access) of (to) the public procurement web portal shall fully cover the expenses incurred by a single operator in the area of public procurement to exercise the powers of a single operator in the area of public procurement (Article 17 of the Public Procurement Law).

LAW ON SPECIAL ECONOMIC AND INDUSTRIAL ZONES

- On 3 April 2019, the Law of the Republic of Kazakhstan “On Special Economic and Industrial Zones” (the “**SEZ Law**”) was enacted. This Law completely replaces the Law “On Special Economic Zones” dated 2011.
- Unlike the previous Law dated 2011, the SEZ Law regulates the establishment and functioning of both special economic zones (the “**SEZ**”), and industrial zones (the “**IZ**”).

Special Economic Zones

- Special economic zone is a part of the territory of the Republic of Kazakhstan with precisely defined borders, where the special legal regime applies that is aimed at the implementation of priority activities. There is a special legal regime in terms of taxation, customs and land regulation in the SEZ territory, i.e. certain preferences are provided to the SEZ participants.
- The SEZ Law was supplemented with a mechanism for inclusion of an activity into the list of priority activities, which provides for application to be filed by a potential SEZ participant or a management company with the competent authority, which then submits the relevant decision to the special commission (Article 19.1 of the SEZ Law).

- To establish a SEZ, the central executive authority (the “**CEA**”), a local executive authority (the “**LEA**”) or a legal entity interested in creating a SEZ shall make a proposal to the competent authority to establish a SEZ with the concept of SEZ establishment. The competent authority forwards the documents submitted to the expert council for consideration and, in case of a positive opinion of the expert council, the competent authority sends a draft resolution on the SEZ establishment with the conclusion of the expert council to the Government for consideration.
- In order to become a SEZ participant, it is necessary to provide the documents specified in the SEZ Law and financial security. If a positive decision is made following the consideration of the application, the management company enters into an agreement for the implementation of activities, whereafter the applicant is entered into a single register and recognised as a participant.
- The SEZ law expanded the list of restrictions on applicants. Thus, for example, subsoil users, individual entrepreneurs that apply special tax regimes and foreign individuals and legal entities in the case when SEZ borders coincide with the customs border of the EEU, can no longer be applicants. A potential SEZ participant shall be engaged in one of the priority activities.
- Prior to the adoption of the new SEZ Law, the land plots, on which the SEZ was established, were provided directly to the SEZ participants. The SEZ Law introduces a new mechanism for providing land plots to SEZ and IZ participants. Land plots will be provided for temporary land use by the management company, which in turn will independently transfer them to 1) SEZ participants engaged in priority activities based on agreements on the implementation of activities, free of charge; 2) persons carrying out auxiliary activities on a reimbursable basis. This mechanism is aimed at reducing the time for participants to obtain land plots.
- Infrastructure objects being built on SEZ territory can be established at the expense of budget funds or at the expense of the SEZ participants. Infrastructure objects created in full or in part at the expense of budget funds on state-owned land plots transferred for temporary paid land use (lease) can be transferred to the management company for property lease (lease), trust management, as well as for replenishment of the charter capital in accordance with the legislation of the Republic of Kazakhstan (Article 17.3 of the SEZ Law).
- The functions of the management company also include the separation of land plots to participants, provision of services on a “one-stop shop” basis, as well as the obligation to reserve land plots, if this is provided for by the project of a SEZ and IZ participant (Article 17.3 of the SEZ Law).
- The new SEZ Law provides in detail the procedure for transferring rights to participate in the SEZ during the legal entity reorganisation:

Merger with other legal entities	Transformation of the legal entity	Accession	Spin-off	Split-up
The right to participate is reissued to the newly emerged legal entity.	The right to participate is reissued to a newly emerged legal entity, except for the cases, when for there is a ban for a legal entity of the particular form to perform activities in the special economic zone.	The right to participate is reissued to the newly emerged legal entity.	The right to participate is reissued to newly emerged legal entities with the consent of the reorganised legal entity.	The right to participate is reissued to newly emerged legal entities with the consent of the reorganised legal entity.

- Please also note that Article 16.2 of the Law “On Special Economic Zones in the Republic of Kazakhstan” provided for the possibility of early abolition of SEZ in case of failure to achieve target indicators by decision of the Government. The new SEZ Law does not provide for such a possibility.

Industrial Zones

- The new SEZ Law provides for the procedure for the establishment of IZ and their functioning.
- Industrial zone is a territory with engineering and communications infrastructure provided to private business entities for the placement and operation of business facilities, including in the area of industry, agriculture, tourism, transport logistics, waste management, according to the procedure established by the legislation of the Republic of Kazakhstan.
- The territory of the industrial zone, in contrast to the SEZ, does not provide for a special legal regime. The purpose of IZ is to provide participants with the common infrastructure required for their production, which reduces the cost of each of the participants on the infrastructure and facilitates business for IZ participants. Unlike SEZ participants, IZ participants are not provided with any special preferences from the state, however, they can take advantage of the preferences generally provided under the Business Code of the Republic of Kazakhstan.
- Based on Article 26 of the SEZ Law, IZ can be: private and public. Public zones can be zones of republican significance, zones of regional significance and small industrial zones.
- IZ of republican and regional significance are established for a period of at least 20 years on land plots owned by the state and not provided for land use in accordance with the [Land Code](#) of the Republic of Kazakhstan. The period of IZ functioning can be extended by decision of the LEA (Article 33.2 of the SEZ Law).

- The table below provides for a brief description of IZ establishment, which does not apply when IZ is established through SEZ abolishing (Article 28.7 of the SEZ Law).

	The Procedure for Establishment of the IZ of Republican Significance	The Procedure for Establishment of the IZ of Regional Significance	The Procedure for Establishment of the Private IZ
1.	The LEA makes a proposal to establish an IZ to the MIID with the feasibility study and concept attached (Article 28.1 of the SEZ Law).	The LEA submits the draft decision on the establishment of the IZ of regional significance to the Public Council of the relevant administrative and territorial unit (Article 29.3 of the SEZ Law).	Owners of the private IZ agree on the IZ establishment concept with the LEA (Article 30.2 of the SEZ Law).
2.	In the case of a positive result of the consideration of the concept and the feasibility study, the MIID submits the concept to the expert council for consideration (Article 28.2 of the SEZ Law).	The LEA decides to establish the IZ of regional importance and simultaneously develops the establishment concept with further placement thereof on the LEA Internet resource (Article 29.1 of the SEZ Law).	The LEA checks the submitted concept for compliance with the master plan for the development of the relevant territory and the requirements of environmental legislation (Article 30.3 of the SEZ Law).
3.	In the case of a positive result of the consideration by the expert council, the MIID provides its consent for the IZ establishment (Article 28.3 of the SEZ Law).	The LEA establishes a management company and allocate a land plot for the IZ (Article 29.4 of the SEZ Law).	The IZ owner register a management company in the form of an LLP or JSC. (Article 30.4 of the SEZ Law).
4.	The LEA makes decision on the IZ establishment (Article 28.3 of the SEZ Law).	The LEA informs the unified coordination centre on the IZ establishment (Article 29.5 of the SEZ Law).	The owner informs the unified coordination centre on the IZ establishment (Article 30.5 of the SEZ Law).

5.	<p>The LEA establishes a management company and allocate a land plot for the IZ (Article 28.4 of the SEZ Law).</p>		
6.	<p>The LEA informs the unified coordination centre on the IZ establishment (Article 28.6 of the SEZ Law).</p>		

- Pursuant to Article 27.5 of the SEZ Law, the procedure for the establishment and functions of a small industrial zone shall be governed by the rules for the establishment and functioning of small industrial zones, which shall be located on the territory of the production premises, which are further transferred to small and medium-sized businesses.
- In order to become an IZ participant, the applicant submits an application to the management company of an industrial zone of republican or regional significance in accordance with the [rules](#) and [criteria](#) for selection of projects for special economic and industrial zones. Subject to a positive decision on the admission of the applicant to the IZ by the relevant regional coordination council, the management company of the industrial zone of republican or regional significance enters into activities implementation agreement with the applicant. In case of failure to perform obligations specified in the activities implementation agreement, the agreement may be terminated by the management company (Article 34 of the SEZ Law).
- The Law “On Special Economic Zones in the Republic of Kazakhstan” provided for the establishment of a management company in the form of JSC, but did not provide for the procedure for establishment of the SEZ management company.
- Based on Article 38.1 of the SEZ Law, a management company is established by the Government or LEA in the form of a JSC or an LLP. The founder of the management company may be the Government and LEA, while the state shall own no more than 26% of the shares (interests) in the management company (Article 38.3 of the SEZ Law). The management company may be simultaneously the management company of both a SEZ and an IZ.
- The new SEZ Law also introduces the functions of a management company and provides for the responsibility of a management company for the improper performance of its functions under an agreement with the competent authority (Article 38.11 of the SEZ Law).

MORATORIUM ON THE ESTABLISHMENT OF QUASI-STATE SECTOR ENTITIES

- On 3 July 2019, the Decree of the President of the Republic of Kazakhstan No. 51 “On the Introduction of a Moratorium on the Establishment of Quasi-State Sector Entities” was adopted. The Decree becomes effective from 4 July 2019.
- By the Decree, the President introduced a moratorium on the establishment of quasi-state sector entities until 31 December 2020, except for:
 - 1) legal entities operating in the social sphere and/or in the area of livelihoods of settlements;
 - 2) legal entities created as part of the optimisation of existing legal entities through their reorganisation (merger or transformation);
 - 3) JSCs (LLPs), where 50% or less of voting shares (interests) in the charter capital will be owned by quasi-state sector entities;
 - 4) legal entities created by the instruction and/or in agreement with the President of the Republic of Kazakhstan.

CURRENCY REGULATION LAW

- The Law of the Republic of Kazakhstan “On Currency Regulation and Currency Control” No. 167-VI dated 2 July 2018 (the “**New Currency Law**”) is effective in Kazakhstan from 1 July 2019.
- In general, the New Currency Law is aimed at tightening currency regulation and counteracting the funds withdrawal from the country. The New Currency Law and relevant by-laws expanded the list of currency transactions to be monitored by the currency control authorities, established new requirements for cash currency transactions, requirements for the intended currency use, etc. At the same time, the New Currency Law is to simplify the provision of information on currency transactions for market entities. The New Currency Law abolished regimes of registration and notification of currency transactions and the complex division thereof. Instead, so called “contract record numbers” and the general concept of “currency transactions for the movement of capital” that are subject to record registration were introduced.

Status change for branches and representative offices of foreign organisations

- From 1 July 2019, as a general rule, branches (representative offices) of foreign non-financial organisations, which are permanent establishments of such foreign non-financial organisations in the Republic of Kazakhstan in accordance with the Tax Code of the Republic of Kazakhstan, are classified as residents of the Republic of Kazakhstan for the purposes of currency regulation and currency control. Accordingly, from 1 July 2019, these entities are obliged to carry out settlements with residents of the Republic of Kazakhstan only in tenge and cannot use foreign currency for such settlements.
- From 16 December 2020, this restriction will also apply to branches of foreign financial organisations, which, in accordance with the laws of the Republic of Kazakhstan, are entitled to perform banking and (or) insurance activities in the territory of the Republic of Kazakhstan.
- However, the New Currency Law provides for the exceptions from the above rule, in particular:

- settlements between a branch (representative office) of a foreign organisation and the parent foreign organisation, as well as settlements between two branches (representative offices) of foreign organisations can be made in foreign currency;
- the requirement for repatriation does not apply to branches (representative offices) of foreign organisations;
- branches (representative offices) of foreign organisations are not obliged to undergo record registration of currency transactions on capital movement and notify the National Bank on opening accounts in foreign banks;
- the requirement to grant permission to an authorised bank for the disclosure of information about payments and (or) money transfers on currency transactions, which can be aimed to the funds withdrawal from Kazakhstan, will not apply to branches (representative offices) of foreign organisations;
- the status of a non-resident of the Republic of Kazakhstan for the purposes of currency regulation will be retained by branches (representative offices) of foreign organisations that concluded relevant agreements with the Republic of Kazakhstan. The list of these entities is established by the Decree of the Government of the Republic of Kazakhstan "On Approval of the List of Branches (Representative Offices) of Foreign Non-Financial Organisations, for Which the Status of Non-Resident under the Currency Legislation of the Republic of Kazakhstan is Established by the Terms of Agreements Concluded on behalf of the Republic of Kazakhstan with the Foreign Organisations" No. 179 dated 11 April 2019.

Expanding the list of currency transactions to be monitored

- The list of currency transactions that are subject to monitoring and record registration was expanded. For instance, the transaction for the acquisition and redemption by residents (non-residents) of electronic money of non-resident (resident) issuers now is classified as a currency transaction related to the export (import) of goods, works and services (and, accordingly, is subject to monitoring).

Replacing registration and notification regimes with record registration

- The regimes of registration and notification on currency transactions were cancelled, instead of them a single record registration of currency transactions was introduced.
- A currency transaction is subject to record registration, if its amount exceeds USD 500,000 or an equivalent amount in another currency. A resident must undergo record registration (obtain so called "contract record number") before the fulfilment of obligations under the contract by any of the parties. A contract record number is assigned to the contract within 5 business days from the day the resident provides the documents.
- These novelties simplify the process of monitoring currency transactions for both banks and residents, since previously there were two regimes and two thresholds for the amounts of currency transactions, which in practice made it difficult to determine the applicable regime.

Record number for an account opened with a foreign bank

- Pursuant to the New Currency Law, resident legal entities shall not only notify of opening an account with a foreign bank (this obligation was also provided for by the old law), but also must receive a record number for such an account. A resident legal entity must submit quarterly reports on the use of such an account to the National Bank with an indication of its record number.

Foreign currency exchange

- The concept of the domestic currency exchange market was introduced. Exchange transactions with foreign currency can be carried out only by banks or authorised organisations. Other legal entities are prohibited to be engaged in foreign currency purchase and sale, and exchange.
- Founders of authorised organisations must disclose the sources of funds invested in the charter capital of the authorised organisations.

Countering the funds withdrawal from Kazakhstan

- The amendments introduced a list of currency transactions with signs of money withdrawal from Kazakhstan. Such transactions, for instance, include a financial loan without an obligation to transfer money to a bank account opened with an authorised bank, import if the term for a non-resident to return money in case of failure to fulfil its import obligations exceeds 720 days from the moment the resident fulfilled its obligations.
- The transfer of money on the above currency transactions by banks of Kazakhstan will be only performed if the resident provides for a permit to a servicing Kazakh bank to disclose information about such a transaction to the currency control authorities.

Currency regulation in the AIFC territory

- Currency transactions committed in the AIFC territory are subject to separate currency regulation. In particular, such operations are not subject to the requirement of record registration, notification by banks of currency transactions carried out thereby, and notification by residents of bank accounts opened with foreign banks.
- According to the AIFC Law, monetary operations of AIFC participants shall be committed in the currency of the agreement. Therefore, restrictions on conducting currency transactions between residents in tenge only do not apply to AIFC participants.
- Currency regulation in the AIFC territory, as a general rule, is determined by the AIFC acts in agreement with the National Bank.

CURRENCY TRANSACTIONS RULES

- The Resolution of the Board of the National Bank No. 40 dated 30 March 2019 approved the Rules for the Implementation of Currency Transactions in the Republic of Kazakhstan (the "**Currency Transactions Rules**"). The Rules become effective from 1 July 2019.
- The Currency Transactions Rules establish:
 - the procedure for making payments or money transfers on currency transactions;

- the procedure for the purchase and (or) sale of non-cash foreign currency in the domestic currency market of the Republic of Kazakhstan;
- the procedure for conducting operations on a bank account related to the withdrawal, crediting and use of cash foreign currency.

The procedure for making payments or money transfers on currency transactions

- Payment or transfer of money on a currency transaction of a resident from a non-resident's account with a foreign bank in order to fulfil the resident's obligations is performed in the following cases:
 - when transferring a financial loan received by a resident from a non-resident to the third party's accounts;
 - in the provision of financial services in the securities market to a resident by a non-resident, who has the right to carry out professional activities in the securities market according to the legislation of the state, where it is registered;
 - when a non-resident provides services to a resident under an agency contract.
- When making a payment or transferring money under a currency agreement, which is subject to the record number requirement, the resident indicates in payment documents the details of such an agreement and its record number. To identify the amounts received, the resident notifies the non-resident of the need to indicate in the payment documents on the transfer of money in its favour the details of the currency agreement and its record number.
- When making a payment and (or) transferring money under a currency agreement, which is subject to the record number requirement, the bank (its branch) checks the details of the currency agreement and its record number in the payment document.

The procedure for the purchase and (or) sale of non-cash foreign currency in the domestic exchange market of the Republic of Kazakhstan

- Purchase and (or) sale of non-cash foreign currency in the domestic exchange market of the Republic of Kazakhstan through bank accounts is carried out by residents and non-residents on the basis of an application for the purchase or sale of non-cash foreign currency.
- The purchase and (or) sale of non-cash foreign currency in the domestic exchange market of the Republic of Kazakhstan through bank accounts for further internal transfer of money is carried out by branches (representative offices) of foreign non-financial organisations under a document confirming that this money transfer is internal corporate transfer.
- When applying for the purchase of non-cash foreign currency, resident legal entities shall indicate the purpose of the purchase of non-cash foreign currency.
- When applying for the purchase or sale of non-cash foreign currency for the national currency through bank accounts with banks, non-resident legal entities shall indicate the purpose of the purchase or sale of non-cash foreign currency.
- Resident legal entities buy non-cash foreign currency for the national currency at one bank within one business day for purposes not related to the fulfilment of obligations in foreign currency in an amount not exceeding USD 100,000 or equivalent in another currency.
- The bank does not accept the application of a resident legal entity for the purchase of non-cash foreign currency for the national currency, if:

- the purpose of the purchase and the amount of foreign currency specified in the application is not confirmed by a copy of the currency agreement;
- the amount of purchases of non-cash foreign currency for the national currency under one currency agreement calculated on the basis of applications from a resident legal entity exceeds the amount of such a currency agreement;
- the amount of purchases of non-cash foreign currency for the national currency by one legal entity through one bank within one business day for purposes not related to the fulfilment of obligations in foreign currency calculated on the basis of applications from the resident legal entity exceeds USD 100,000 or equivalent in another currency.

The procedure for conducting operations on a bank account related to the withdrawal, crediting and use of cash foreign currency

- Individuals may withdraw (deposit) cash foreign currency from their bank accounts (to their bank accounts) with banks without restrictions.
- Withdrawal of foreign currency by legal entities and branches (representative offices) of foreign organisations from their bank accounts for the purposes of settlements with individuals is only permitted in certain cases, for instance, for the purpose of paying salaries, business trip allowances, when settling in duty-free shops, for the purposes of banking operations and operations in exchange offices, etc.
- The legal entity or branch (representative office) of a foreign organisation, when withdrawing cash in foreign currency from its bank account and when crediting cash in foreign currency to its bank account, shall indicate the ground for such withdrawal or receipt of cash foreign currency.

RULES FOR CURRENCY TRANSACTIONS MONITORING

- The Resolution of the Board of the National Bank No. 64 dated 10 April 2019 approved the Rules for the Monitoring Currency Transactions in the Republic of Kazakhstan (the "**Currency Transactions Monitoring Rules**"). The Rules become effective from 1 July 2019.
- The Currency Transactions Monitoring Rules specify the procedure for monitoring currency transactions in the Republic of Kazakhstan.

Procedure for Currency Transactions Monitoring

- Pursuant to the Currency Transactions Rules, record registration applies to a currency agreement on capital movement, which provides for:
 - the receipt of property (money) in the Republic of Kazakhstan and (or) the emergence of obligations of a resident to return property (money) to a non-resident in an amount that exceeds USD 500,000 (five hundred thousand) or equivalent in another currency;
 - the transfer of property (money) in the Republic of Kazakhstan and (or) the emergence of the claim of a non-resident for return of the property (money) in an amount that exceeds USD 500,000 (five hundred thousand) or equivalent in another currency.
- To define whether record registration applies to a currency agreement on capital movement, where the agreement amount is expressed in any currency rather than the USD, and there is no

indication of the exchange rate to the USD, the equivalent of the agreement amount in USD is calculated using the market exchange rate as of the date of signing the agreement (in the absence thereof - on the date of agreement entry into force).

- If the amount of the agreement is not indicated in the currency agreement on capital movement at the date of its signing (in the absence thereof - at the date of its entry into force), then the currency agreement on capital movement is considered to be an agreement which subject to record registration.
- The following currency agreements on capital flows are exempt from record registration requirement:
 - where a party to the currency agreement on capital movement is the National Bank and (or) the Ministry of Finance of the Republic of Kazakhstan;
 - where a party to the currency agreement on capital movement is an AIFC participant, and the transaction is carried out in the AIFC territory;
 - agreements on state external loans of the Republic of Kazakhstan, non-state external loans with state guarantees of the Republic of Kazakhstan.
- Foreign currency agreements are not subject to record registration, if they provide for the following capital movement transactions:
 - 1) carried out by foreign institutions of the Republic of Kazakhstan, branches (representative offices) of foreign organisations operating in the territory of the Republic of Kazakhstan;
 - 2) own capital movements of authorised banks, insurance (reinsurance) companies, brokers and (or) dealers, management companies;
 - 3) transactions related to the investment of own and (or) pension assets of the unified accumulative pension fund and voluntary accumulative pension funds;
 - 4) placement and (or) acquisition of:
 - state securities of the Republic of Kazakhstan;
 - securities of a resident issuer issued in accordance with the laws of another state and in its territory (including depositary receipts, the underlying asset of which is the securities of a resident issuer);
 - securities of a non-resident issuer issued in accordance with the legislation of the Republic of Kazakhstan (including Kazakhstan depositary receipts);
 - 5) acquisition in the secondary market of:
 - debt securities of a resident issuer issued in accordance with the legislation of the Republic of Kazakhstan by a resident from a non-resident;
 - debt securities of a non-resident issuer issued in accordance with the legislation of another state and in its territory by a non-resident from a resident;
 - 6) transactions of residents based on a broker agreement concluded with a resident broker, or on the basis of an investment portfolio management agreement concluded with a resident company managing the investment portfolio;
 - 7) acquisition of exclusive rights to the result of intellectual creative activity;
 - 8) transactions of resident individuals related to the acquisition of real estate, free transfer of money and other currency values.
- Record number is not assigned to:
 - 1) an agreement for a free transfer by a resident to a non-resident (by a non-resident to a resident) of money or other currency values, if it results in the fulfilment or termination of obligations or alienation of the right of ownership to the currency values, under a currency agreement on capital movement, for which the record number was earlier obtained by the resident;

- 2) an agreement on the sale by a resident to a non-resident of shares, interests in the capital of a non-resident investment object, if the resident earlier obtained a record number for the currency agreement on capital movement for the resident's participation in the capital (acquisition by a resident of shares, interest) of a non-resident investment object;
- 3) an agreement for the redemption by a resident investment object from a non-resident of its own shares, interests, if the resident earlier obtained a record number for the currency agreement on capital movement in connection with non-resident participation in the capital of the resident investment object.

Record numbers obtaining by resident legal entities for accounts with foreign banks

- Opening of a bank non-allocated metal account with a foreign bank, except for an account opened by an individual, a bank, a branch (representative office) of a foreign organisation, and an AIFC participant, must be notified.
- A resident quarterly, before the 10th (tenth) day (inclusive) of a month following the reporting period, submits reports to the territorial branch of the National Bank at the place of receipt of the record number for the currency agreement for capital movement or an account with a foreign bank, in accordance with the Currency Transactions Monitoring Rules.
- A resident party to a currency agreement on capital movement, to which a record number has been assigned, submits the following reports:
 - 1) for financial loans - a report on the development and servicing of the financial loan;
 - 2) for the participation of a resident in the capital of a non-resident investment object, on the acquisition by a resident of shares, interest in a non-resident's capital - a report on participation in the capital of the investment object;
 - 3) for the participation of a non-resident in the capital of a resident investment object, on the acquisition by a resident (sale by a resident to a non-resident) of shares, interest in a resident's capital - a report on participation in the capital of the investment object;
 - 4) for transactions with securities (except for participation in capital), derivatives - a report on the fulfilment of obligations;
 - 5) for transactions related to the acquisition of ownership of real estate, the acquisition of a completely exclusive right to means of individualisation of participants in civil turnover, goods, work or services, the transfer of money and other property in fulfilment of obligations of a joint venture participant, trust management, trust - a report on the fulfilment of obligations;
 - 6) for transactions related to the transfer of money and financial instruments to professional securities market participants engaged in currency transactions on behalf of customers, to accounts for record and storage of money owned by customers - a report on the fulfilment of obligations;
 - 7) for the free transfer of money and other currency values - a report on the fulfilment of obligations.
- A resident legal entity submits the following reports for the account with a foreign bank, to which a record number has been assigned:
 - 1) a report on a bank account with a foreign bank opened by its branch (representative office) located outside of the Republic of Kazakhstan - a report on the fulfilment of obligations;
 - 2) in cases not specified above - a report on the movement of money in an account with a foreign bank.

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We hope the review given above will be useful for you. Please feel free to contact us by finance_securities@gratanet.com if you have any questions or comments. We would be happy to get any feedback.

Best Regards,

Banks & Finance Team

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