GRATA INTERNATIONAL

DOING BUSINESS IN KAZAKHSTAN

Dear reader,

Let us to introduce you the 'Doing Business in the Republic of Kazakhstan' publication prepared by GRATA International.

The information in the brochure is based on theoretical and practical information available as of March 2020. The content of this brochure is intended for foreign businessmen and companies seeking to do business in the Republic of Kazakhstan. The brochure provides you with the comprehensive information about the main forms of doing business in Kazakhstan, including a detailed comparison table of such forms, information on the tax structure, bankruptcy, PPP and frequently asked questions for starting and doing business in Kazakhstan. Please note that the legislation in the Republic of Kazakhstan is subject to frequent changes.

If you have decided to do business in the Republic of Kazakhstan, we will be happy to provide you with our services.

We hope the information given below will be helpful and useful for you.

Best Regards,
GRATA International

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ABOUT GRATA INTERNATIONAL

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GRATA International is a global team representing different countries and nationalities, and has legal advisory experience in all areas of law.

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- Licences and Permits
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- Real Estate
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- Tax

In 2014, our company passed the procedure of certification of the quality management system and received the conformity certificate ISO 9001: 2009.

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THE MAIN FORMS OF INCORPORATION FOR DOING BUSINESS IN KAZAKHSTAN

Despite the fact that Kazakh legislation provides for a number of forms of incorporation for commercial companies (full partnership, limited liability partnership, additional liability partnership, joint-stock company), in practice, businessmen and foreign investors often prefer certain forms of incorporation such as an LLP (TOO) or JSC (AO). Other forms of doing business in Kazakhstan via branches and representative offices of foreign legal entities are also common.

Limited Liability Partnerships (LLP (TOO)

An LLP (TOO) is the most common form of a legal entity established by one or several members, who are not liable for its obligations, but bear the risk of losses associated with the company's activities to the extent of their personal contributions (participatory interests) (with certain exceptions). The company's liability is limited to the amount of its assets. The required minimum of the charter capital is 100 MCI*[1] for medium and large businesses, and 0 KZT for small businesses, while the interest of participants are generally proportional to their contributions.

The participants shall have the pre-emptive right to acquire the shares of the retiring participants. Bodies of a limited liability partnership are:

a) the supreme body of the partnership is a sole participant or the general meeting of participants;
The General Meeting of participants, which is held at least once a year, or the sole participant in the capacity of the supreme governing body of an LLP have exclusive competence in respect of the most important matters such as net income payment, company liquidation or pledge of all company's assets;

b) the executive body (sole or collective) of the company. Daily management of the company is carried out by the Director/General Director (sole executive body) or the Board of Directors/Management Board (collective executive body), who are elected by the sole participant/general meeting of participants. The powers conferred on the executive body must be reflected in the constituent documents of an LLP. In addition, the supervisory board may be formed within the company, which, however, is not a prerequisite. In contrast to foreign partnerships, Kazakh LLPs are legal entities being an equivalent of a limited liability company (LLC).

Joint-Stock Companies (JSC (AO)

A JSC (AO) is a legal entity, which issues shares for the purpose of raising capital for its activities. The JSC may have an unlimited number of shareholders.

Shareholders are not liable for the obligations of the JSC but bear the risk of losses to the extent of their shares (with certain exceptions). A JSC has assets separated from the assets of its shareholders and shall not be liable for their obligations. The required minimum of the charter capital is 50,000 MCI, and this amount must be paid within 30 days after the state registration of a JSC.

Management structure of a JSC:

a) the supreme body is a sole shareholder or the general meeting of shareholders;
b) the management body is the board of directors;
c) the executive body - sole or collective.

The General Meeting of Shareholders is the supreme governing body of a JSC and shall be held at least once a year. The competence of the Sole Shareholder/General Meeting of Shareholders is to make decision on the most priority matters such as changes to the charter, increase in the shares number, election of the board of directors, selection of the external auditor, and a number of other issues.

The Board of Directors carries out the general management of the JSC activities. In particular, the competence of the Board of Directors includes issues such as making the decision to place shares, regulation of the internal audit service performance, opening branches and representative offices, election of the executive body, approval of large transactions, etc.

[1] MCI - A monthly calculation index established by the State Budget Law for calculating benefits and other social payments, as well as for applying penalties, taxes and other payments in the Republic of Kazakhstan. MCI in 2020 is equal to 2651 Tenge.

The current operations of a JSC are governed by the Executive Body. The Executive Body can be sole or collective. The Executive Body is entitled to make decisions on any matters of the company, which are not covered by the exclusive competence of other bodies and officers of the company.

Representative Offices and Branches

The representative offices and branches of legal entities are not individual legal entities but their separate subdivisions. A representative office has no right to do business aimed at income generation, but only provides for the representation of the parent company's interests. Branches can perform both the functions of a representative office, and all and a part of the functions of the parent company, including doing business.

The representative offices and branches operate under the regulations and managed by the head authorised by the parent company with the relevant power of attorney. They are established mainly in the same way as legal entities and are subject to the same restrictions that apply to legal entities.

State Registration

The registration is performed by "Government for Citizens" State Corporation" Non-Commercial JSC. Pursuant to the legislation, the state registration of an LLP or branches/representative offices thereof takes one (1) business day, while registration of a JSC, branches/representatives offices thereof and foreign companies takes 5 business days. State registration with 'Government for Citizens' State Corporation' Non-Commercial JSC also implies automatic registration with tax authorities. Currently, there is no need for a separate registration with the statistical authorities.
The online registration of the legal entities is also possible. The legislation provides for a standard package of documents required to be submitted for the registration purposes. It is important that the documents shall be properly signed, stampted, notarised and legalized or apostilled.

Location (Legal Address)

A legal entity's location (seat) is the address specified in its constituent documents. In accordance with Kazakh legislation, the address of a legal entity is the location of its permanent body. For the tax purposes, the actual address of a legal entity must be the same as its legal address, otherwise the taxpayer may be subject to administrative penalties.

Corporate Stamp and Bank Accounts

According to recent legal changes, private business entities are not required to have a corporate stamp. In practice, however, most companies prefer to have them in place.

Straight after the registration of the company, the branch or the representative office, a stamp thereof shall be made through an authorised local company.

Bank accounts can be opened in local banks, including subsidiaries of foreign banks established in the territory of Kazakhstan, in the national currency Tenge and/or foreign currency.

The branches and representative offices of foreign legal entities may opt to use accounts in foreign banks as well.

COMPARATIVE TABLE OF FORMS OF DOING BUSINESS AND TAXATION

Criteria	Representative office	Branch	LLP	JSC
Legal Status	not a legal entity	not a legal entity	legal entity	legal entity
Definition	Representative office is a separate subdivision of a legal entity situated outside of its location, which protects and represents the interest of the legal entity, as well as enters into transactions and any other legal actions on its behalf, except for the cases specified by the legislative acts of the Republic of Kazakhstan. A representative office is vested with the property of the legal entity that has created it and operates on the basis of the regulations approved by this legal entity.	Branch is a separate subdivision of a legal entity situated outside of its location, which performs all or a part of its functions, including the representational functions. A branch is vested with the property of the legal entity that has incorporated it and operates on the basis of the regulations approved by this legal entity.	LLP is a partnership established by one or several individuals or legal entities, which has its charter capital divided into interests, sizes of which are stipulated in the constituent documents; the participants of the LLP shall not be liable for its obligations and only bear the risk of losses associated with the activities of the LLP to the extent of their contributions.	JSC is a legal entity, which issues shares for the purpose of raising capital for its activities.
Founders	Parent company (local or foreign)	Parent company (local or foreign)	One or more individual and(or) legal entity(s) can be the founders of a LLP (local or foreign). Restriction: The LLP may not have as a sole participant another Kazakh business partnership consisting of a sole participant.	The founders of the JSC are individuals and(or) legal entities (local or foreign).
Potential Activities	Limited to protection and representation of the interests of the legal entity. Has no right to engage in business activities.	Limited to activities of the parent company. May engage in business activities, if the parent company is allowed to carrying out such activities. Certain activities can require licensing or permits.	Not limited; certain activities, however, can require mandatory licensing (such activities can only be performed upon obtaining of the relevant license). There are restrictions related to the activities that can be performed by an LLP 100%-owned by non-residents. These restrictions apply to security activities, as well as being engaged in the mass media. Companies engaged in insurance activities, as well as market entities that take a monopoly position on the market, cannot combine their core activities with other business activities.	Not limited; certain activities, however, can require obligatory licensing (such activities can only be performed upon obtaining of the relevant license). There are restrictions on activities. Companies engaged in insurance activities, as well as pension funds and market entities that take a monopoly position on the market, cannot combine their core activities with other business activities.
Relevant Foundation Documents	Regulations of the representative office approved by the resolution of the parent company. Regulations of the representative office of foreign companies, non-profit organisations and joint-stock companies shall be submitted to the justice authorities.	Regulations on the branch approved by the resolution of the parent company. Regulations on the branch of foreign companies, non-profit organisations and joint-stock companies shall be submitted to the justice authorities.	Articles of Association and Foundation Agreement (when there is more than one founder LLP) approved by the resolution of the founder(s) and signed by an authorised person; constituent documents are not required to be submitted to the justice authorities.	The Articles of Association shall be submitted to the justice authorities.

Appropriate Classification of a Business Entity	Not provided for representative offices, while legislation applies to representative offices according to the status of the parent company (in the absence of classification it is generally considered as a medium or large business entity).	Not provided for branches, while legislation applies to branches according to the status of the parent company (in the absence of classification it is generally considered as a medium or large business entity).	Micro-business entities are small businesses engaged in private business, with an annual average number of employees of not more than 15 individuals, or an average annual income of not more than 30,000 MCI. Small business entities are legal entities engaged in private business, with an annual average number of employees of not more than 100 persons, and an average annual income of not more than 300,000 MCI. Entities engaged in certain activities: activities related to the turnover of narcotic, psychotropic substances and precursors; production and wholesale of excisable products; grain storage etc. do not amount to small business entities. Medium business entities are legal entities engaged in private business, with an annual average number of employees between 100 and 250 individuals, and(or) an average annual income between 300,000 MCI but below 3,000,000 MCI. Large business entities are legal entities engaged in private business, with an annual average number of employees of over 250 individuals and(or) an average annual income of over 3,000,000 MCI.	
Taxpayer Status in the Republic of Kazakhstan	Is a taxpayer	Is a taxpayer	Has the residency status; and is a taxpayer	Has the residency status; and is a taxpayer
Tax Regime	If operations of the representative office of a foreign legal entity is limited in Kazakhstan to preparatory and auxiliary activities and does not form a permanent establishment, the representative office does not have obligations to pay corporate income tax and value added tax.	If operations of the branch forms a permanent establishment, the tax regime applied to the branch is mainly similar to the general tax regime applicable to a Partnership and a Joint-Stock Company, including corporate income tax obligations at a rate of 20% and value added tax at a rate of 12%. However, branches shall additionally pay corporate income tax from net profit (equivalent to the tax on dividends) at a rate of 15%, with a possible rate reduction down to 5%-10%, subject to the relevant convention on avoidance of double taxation. The branch shall pay taxes in Kazakhstan from the income earned in connection with activities in Kazakhstan.	Since the applicable tax regime does not depend on the legal form of a legal entity, the same tax regime applies to both a Partnership and a Joint - Stock Company. The applicable tax regime may vary depending on the sector of the economy where the legal entity (a Partnership or a Joint-Stock Company) operates. A Kazakh legal entity as a tax resident shall pay taxes in Kazakhstan from all of its global income, i.e. received both in and outside of Kazakhstan. As a rule, the income of a tax resident from business activities shall be subject to corporate income tax at a rate of 20% and a value added tax at a rate of 12%. Unlike a branch of a foreign legal entity, dividends (net income) distributed by a Kazakh legal entity between its shareholders or participants can be fully exempted from corporate income tax, subject to certain conditions. The Tax Code provides separate tax regimes for small businesses, subsoil users, producers of agricultural products and gambling industry. Besides, the Tax Code provides for tax benefits for entities investing in the economy of Kazakhstan (for example, 'rapid depreciation' for newly commissioned buildings, facilities, equipment, tax exemption for fees under financial leasing contracts, VAT exemption in importing equipment, machinery, and vehicles into Kazakhstan according to the list approved by the Government), including projects implemented in special economic zones and individual investment projects.	
Need of Tax Registration and Obtaining of the Individual Identification Number (IIN) for the Director	Yes	Yes	Yes	Yes
Work Permits	Required for all foreign employees/workers other than the head of the representative office.	Required for all foreign employees/workers other than the head of the branch.	Required for all foreign employees working in Kazakhstan, including the director, except for the cases stipulated by the legislation of the Republic of Kazakhstan. In particular, the work permit is not required for the CEO (deputies) of an LLP, where a 100% stake in the charter capital belongs to a foreign person(s).	Required for all foreign employees working in Kazakhstan, including the director, except for the cases stipulated by the legislation of the Republic of Kazakhstan. In particular, the work permit is not required for the CEO (deputies) of a JSC, where a 100% stake in the charter capital belongs to a foreign person(s).

Extent of the Members' Liability	The parent company shall be liable for the obligations of its representative office to the full extent.	The parent company shall be liable for the obligations of its branch to the full extent.	As a general rule, participants of the LLP bear the risk of losses associated with the activities of the LLP within the value of their contribution. The participants of the LLP may be jointly liable in case of the LLP's bankruptcy and other cases.	As a general rules, shareholders of the JSC are not liable for its obligations but bear the risk of losses associated with the activities of the JSC within the value of their shares.
Charter Capital Required	Not required	Not required	The required minimum of the charter capital is 100-fold amount of the MCI for medium and large businesses; and 0 Tenge for small businesses. Contributions to the charter capital of the LLP may be in the form of money, securities, objects, property rights, including use of land right and intellectual property right and other assets. It is not allowed to contribute in the form of personal non-proprietary rights and other intangible assets, as well as by way of setting-off the members' claims to the LLP.	The required minimum of the charter capital is 50,000-fold amount of the MCI.
Terms of the state registration	Within one (1) business day following the day of filing the application along with the necessary documents for representative offices of local legal entities. Within five (5) business days following the day of filing the application along with the necessary documents for the representative offices of non-profit entities, foreign legal entities and joint-stock companies.	Within one (1) business day following the day of filing the application along with the necessary documents for branches of local legal entities. Within five (5) business days following the day of filing the application along with the necessary documents for the branches of non-profit entities, foreign legal entities and joint-stock companies.	Within one (1) business day following the day of filing the application with along the necessary documents.	Within five (5) business days following the day of filing the application along with the necessary documents.
State (Record) Registration Fee	For representative offices of local small and medium businesses - 5,656 Tenge. For representative offices of large businesses and foreign companies - 18 382 Tenge.	For branches of local small and medium businesses - 5,656 Tenge. For branches of large businesses and foreign companies - 18 382 Tenge.	18 382 Tenge for large businesses. State fee is not required for the medium and small businesses.	18 382 Tenge for large businesses. State fee is not required for the medium and small businesses.
Supreme Authorised Body	Head (director) of the representative office.	Head (director) of the branch.	1) Supreme body is the General Meeting of Participants (for the LLP, where 100% of shares in the charter capital is held by a sole participant, such a participant is the supreme managerial body); 2) Executive body is a sole or collective body, which is named by the Articles of Association of the LLP. 3) There can also be supervisory and auditing bodies (Supervisory Board, Audit Commission (Auditor).	1) Supreme body is the General Meeting of Shareholders (for the JSC, where all voting shares are held by a sole shareholder, such a shareholder is the supreme body); 2) Management body is the Board of Directors; 3) Executive body is a collective body or a person, which solely performs functions of the executive body and is named by the Articles of Association of the JSC.

Accountant	Not obligatory but recommended.	Not obligatory but recommended.	Not obligatory but recommended (except for the cases when the organisation is engaged in financial activities, is a non-commercial JSC, subsoil user (other than those extracting common commercial minerals), wheat receiving point/station, which charter capital incudes a state interest, as well as state enterprises founder on the right of economic management.	Not obligatory but recommended (except for the cases when the organisation is engaged in financial activities, is a non-commercial JSC, subsoil user (other than those extracting common commercial minerals), cereal receiving point/station, which charter capital incudes a state interest, as well as state enterprises founder on the right of economic management.
Opening Accounts in Foreign Banks Abroad	No restrictions. May make settlements in foreign currency both with residents and non-residents.	No restrictions. May make settlements in foreign currency both with residents and non-residents.	Only allowed with further obligatory notification of the National Bank of the Republic of Kazakhstan. The cash flow reports for the foreign account shall be submitted to the National Bank on a regular basis. May make settlements in foreign currency with non-residents only.	Only allowed with further obligatory notification of the National Bank of the Republic of Kazakhstan. The cash flow reports for the foreign account shall be submitted to the National Bank on a regular basis. May make settlements in foreign currency with non-residents only.
Legal Address	Legal address confirmation is not required.	Legal address confirmation is not required.	Legal address confirmation is not required.	Legal address confirmation is not required.
Advantages	- simplified incorporation procedure; - no charter capital formation required; - no restrictions on opening bank account outside of the Republic of Kazakhstan and settlements in a foreign currency.	- simplified incorporation procedure; - no charter capital formation required; - no restrictions on opening bank account outside of the Republic of Kazakhstan and settlements in a foreign currency.	- activities are not limited; certain activities, however, require licenses and permits; - liability is generally limited to the participants' interests; - flexible management system; - resident of Kazakhstan; - has the right to participate in tenders. When participating in tenders, it is recognised as a Kazakh supplier of goods and services; - no state fee for registration for small and medium businesses; - short term of the state registration.	- activities are not limited; certain activities, however, require licenses and permits; - liability is generally limited to the shareholders' value of shares; - resident of Kazakhstan; - has the right to participate in tenders. When participating in tenders, it is recognised as a Kazakh supplier of goods and services; - no state fee for registration for small and medium businesses; - short term of the state registration.
Disadvantages	- has no right to engage in business activities; - liability for activities of the representative office lies with the parent company; - is taxable in the manner of legal entities; - has no right to participate in tenders; - shall pay state fee for registration; - long term of the state registration of the representative offices of non-profit entities, foreign legal entities and joint-stock companies.	- activities of the branch are limited to the activities of the parent company. - liability for activities of the branch lies with the parent company; - is subject to taxes in the same way as a legal entity; - when participating in tenders, it is not recognised as a Kazakh supplier of goods and services; - shall pay state fee for registration; - long term of the state registration of branches of non-profit entities, foreign legal entities and joint-stock companies.	- charter capital formation is obligatory, except for small businesses; - restrictions on settlements in a foreign currency.	- charter capital formation is obligatory, the minimum size of the capital is significant; - restrictions on settlements in a foreign currency; - obligatory registration of the shares issue with the Agency of the Republic of Kazakhstan on regulation and development of financial market with reporting to the regulator as an issuer of securities; - obligatory audit of the annual financial statements; - complex management system; - strict disclosure requirements.

INSOLVENCY

The Law 'On Rehabilitation and Bankruptcy' ('Bankruptcy Law') adopted on 7 March 2014 provides for the following insolvency regimes applicable to the insolvent debtor: debt restructuring, rehabilitation, bankruptcy and liquidation without initiation of bankruptcy procedure. Importantly, the Bankruptcy Law does not apply to state enterprises and institutions, pension funds, banks and insurance (reinsurance) organisations that are covered by special bankruptcy regimes.

Restructuring and rehabilitation[2] procedures are aimed to restore the debtor's solvency, while the final liquidation (i.e. bankruptcy) terminates the debtor's activities.

Before the debtor and(or) creditors files a petition with the court for applying rehabilitation procedure and(or) declaring the debtor as bankrupt, the debtor may make a decision on the debt restructuring.

The debtor may claim for the application of the debt restructuring procedure on the basis of its temporary insolvency[3]. The debt restructuring procedure may be initiated by the debtor in the event of its temporary insolvency provided that no rehabilitation or bankruptcy proceedings have been initiated against the debtor.

Within two months from the effective date of the court decision on the application of the debt restructuring procedure, the debtor must conclude an agreement with all creditors on debt restructuring for a period of not more than three years. A debt restructuring agreement may be concluded on the following conditions: deferral and(or) instalment plan for the performance of obligations of the debtor; assignment of rights of claim of the debtor; full or partial forgiveness of debt; write-offs of forfeit (penalties, fines); reduction of interest on loans received; meeting the requirements of the creditor(s) in other ways that do not contradict the legislation of the Republic of Kazakhstan.

From the date of entry into legal force of the court decision on debt restructuring, the following consequences occur:

1) termination of accrual of penalty (late fee, fines) for all types of the debtor's arrears;

2) release of all state authorities' restrictions on the debtor's accounts without relevant decisions of the authorities that imposed them;

3) termination of execution of previous court decisions, arbitral awards, except for payments to citizens, to whom the debtor is liable for causing damage to their life or health without account of claims of compensations for non-pecuniary damage, which became due after the conclusion of the debt restructuring agreement;

4) imposition of new arrests on the debtor's property and other restrictions on the disposal of its property is permitted only with regard to claims, brought against the debtor, for recognising the transaction to be invalid and reclamation of property from unlawful possession.

The debtor may file for rehabilitation if he or she is either temporary insolvent or unable to meet his or her monetary obligations to the creditors within three months from the due date, and contractual obligations to creditors – within four months after the due date. Creditors may file for rehabilitation if the debtor is insolvent. An insolvent debtor is entitled to apply to the court for the suspension of the bankruptcy proceedings and the introduction of the rehabilitation procedure within 7 business days of the date it received a copy of the court ruling on the initiation of bankruptcy proceedings. A mandatory prerequisite for the rehabilitation is that the debtor must be able to improve his or her financial position. The rehabilitation plan shall be approved by the debtor in cooperation with the creditors within three months from the moment when the court decision on introduction of rehabilitation procedure becomes effective.

[2] Both procedures may be applied to commercial entities only.

[3] Insolvency is temporary if at the date of filing a claim, one or more of the following circumstances takes place:

1) obligations to creditors on claims for compensation for harm caused to life and health, collection of alimony, obligation to pay salary, compensation under employment contracts, social security contributions to the State Social Insurance Fund, obligatory pension contributions and obligatory professional pension contributions, deductions and(or) contributions for compulsory social health insurance, as well as rewards to authors for official inventions, utility models, industrial designs are not performed within three months from the due date (enters into force on 01.01.2023);

2) obligations to other creditors are not performed within four months from the due date.

The rehabilitation plan shall be approved by the debtor in cooperation with the creditors within three months from the moment when the court decision on introduction of rehabilitation procedure becomes effective. Within a rehabilitation procedure creditors may decide to deprive existing shareholders and pass management over the debtor to a specially appointed rehabilitation manager. All creditors may make their claims only within rehabilitation proceeding and may not file for bankruptcy.

The transition from the rehabilitation to the bankruptcy procedure is based on a court decision to terminate the rehabilitation procedure, recognition of the debtor as a bankrupt, and liquidation thereof with initiation of bankruptcy proceedings. The rehabilitation manager shall, within ten business days from the date of the decision of the meeting of creditors, file a claim with the court for termination of the rehabilitation procedure, declare the debtor as bankrupt and liquidate it with the initiation of bankruptcy proceedings, if in the course of the rehabilitation procedure, it is found that the debtor refers to III class of financial stability and there are grounds for declaring it bankrupt. The ground for the debtor to file a claim with the court for declaring it bankrupt and liquidate with the initiation of bankruptcy proceedings is the debtor's persistent insolvency[4].

The tenor of a bankruptcy procedure shall not exceed nine months and may be extended by the meeting of creditors up to two year on the following grounds:

1) the case at hand affecting the property interests of the debtor and its creditors;

2) the presence of unsold property;

3) the need to eliminate violations of the legislation of the Republic of Kazakhstan indicated in the court ruling on the refusal to approve the final report;

4) the need to eliminate violations of the legislation of the Republic of Kazakhstan identified by the competent authority.

A resolution of the court on the bankruptcy of the debtor results in the following legal implications:

a) the debtor may not use and realise its property and discharge obligations;

b) all debt obligations shall be considered as due;

c) the accrual of fines and interests on all obligations of the debtor is terminated;

d) all court disputes of a proprietary nature in relation to the debtor are terminated;

e) all claims may be made against the debtor only in bankruptcy proceeding (except claims where third persons are acting as guarantors or pledgors);

f) all arrests and liens on the debtor's property are eliminated upon application of administrator; and any new arrests on the property of the debtor may be imposed only in case of claims for invalidation of the transaction and reclamation of property from illegal possession of the debtor.

Upon an appointment by the court and up to completion of considering the bankruptcy case, the temporary manager shall be obliged to:

a) collect details on financial status of the debtor on the basis of documents of business accounting and financial accountability for the purpose of developing the opinion on financial stability;

b) provide the court with the opinion on debtor's financial status;

c) perform other duties stipulated by the legislation of Kazakhstan.

[4] Insolvency is persistent, if the debtor's obligations exceed the value of its property as of the date of filing the claim with the court and at the beginning of the year, in which the claim is filed, as well as at the beginning of the year preceding the year of filing the claimn, if the debtor filed the claim in the first quarter of the calendar year.

Temporary manager shall send a notice, within two business days from the date of issue of the appointment regulation by the court, on initiation of a bankruptcy case and procedure for filing requirements by the creditors in Kazakh and Russian languages for placing on the website of the competent authority. Creditors must file their claims to a debtor within a month from the date of publication of the announcement on the procedure for filing claims by creditors, and the claims shall contain information on the claim amount, as well as an indication of one of the ways of notifying the meeting of creditors. Temporary administrator shall specify in the notice of acknowledgement of the creditors' claims (in full measure or in a part) the date, time, place and agenda of the first creditors' meeting. Temporary administrator shall, within three business days from the date of entering into force of the court decision on declaring the debtor as bankrupt, sent the register of the creditors' claims to the competent authority for placing on website of the competent authority. Please note that the first meeting of creditors shall be held by a temporary manager within twenty business days from the date of declaring the debtor as bankrupt.

Upon the court decision on declaring the debtor as bankrupt, the temporary manager shall transfer constitutive documents, financial statements, entitling documents to a bankrupt's property, seals, stamps, material and other values belonging to the bankrupt to the bankruptcy manager.

Upon resolution of the court on the bankruptcy of the debtor, the bankruptcy manager realises the debtor's property through public auction and satisfies the claims of the creditors included on the register of creditors' claims in the following order of priority:

a) administrative and court expenses;

b) claims under health or life damage obligations, recovery of alimony, payment of remuneration and compensations to persons who worked under employment agreements, social insurance and pension payments, payments under copyright agreements;

c) secured creditors' claims;

d) claims for repayment of tax debt, as well as the debt for customs payments, special, antidumping, commission duties, interests;

e) claims of other creditors;

f) claims for damages and fines (penalties), as well as labour remuneration and compensations; and

g) claims of creditors files later than one month after the publication of the announcement on the procedure for filing claims by creditors.

After the creditors' claims are satisfied, the bankruptcy manager shall submit to the court the final report on its activity approved by a meeting of creditors along with the liquidation balance sheet and the report on the use of property left after the satisfaction of creditors' claims, which is to be approved by the court. Then, the bankruptcy procedure is subject to completion. Liquidation of a bankrupt is deemed completed, and a bankrupt – liquidated after making the relevant entry in the state registers of legal entities or deregistration of an individual from as a businessman, except as otherwise provided by the Bankruptcy Law. Besides, the liquidation of the debtor may be performed without initiating bankruptcy proceedings, in cases where the debtor is absent; there is a combination of the following circumstances in relation to the debtor:

1) the debtor has a debt to creditors not exceeding 2,500 MCI established for the corresponding financial year by the law on the republican budget;

2) within three years before filing the claim, the debtor did not have property on the right of ownership, as well as receivables;

3) within three years before filing the claim, the debtor did not make transactions that upon their completion could be invalidated on the grounds provided for by this Law and other laws of the Republic of Kazakhstan;

4) within three years before filing the claim, the debtor did not make payments and(or) money transfers to bank accounts and cash desk;

5) within three years before filing the claim, the debtor was not included in the schedules of tax and customs audits and other forms of control established by the tax and customs legislation of the Republic of Kazakhstan;

6) as of the date of filing the claim, the criminal prosecution authorities do not conduct a pre-trial investigation against the founder (participant) of the legal entity or its official, as well as a businessman, for committing a criminal offense related to the debtor's activities.

Within five business days after the receipt of the claim for the debtor's liquidation without initiating bankruptcy proceedings, the court shall issue a ruling on initiating proceedings. Then the court, within five business days, shall make a decision on liquidation of the debtor without initiating bankruptcy proceedings. The competent authority engaged in such liquidation shall:

1) within two business days, place an announcement on the debtor's liquidation without initiating bankruptcy proceedings and the procedure for filing claims by creditors in the Kazakh and Russian languages on the Internet resource of the competent authority;

2) form a register of creditors' claims;

3) submit to the court for approval the final report and the liquidation balance sheet no later than two business days after the approval by the meeting of creditors;

4) send to the bank, the organisation performing certain types of banking operations, an application for the closure of bank accounts of the bankrupt no later than three business days after the final report approval by the court.

5) submit to the meeting of creditors for approval a final report and a liquidation balance sheet, in case when the debtor does not have property;

6) file a claim with the court for initiating bankruptcy proceedings upon detection of the property mass and(or) return of previously derived property to the property mass in the course of conducting liquidation of the debtor, as well as upon detection of the absence of grounds for applying liquidation without initiating bankruptcy proceedings.

In this case, when the owner of property or a body of legal entity makes the decision on its liquidation, and the cost of property is insufficient for satisfying the creditors' claims in full, the liquidation commission shall file a petition to the court for declaring the debtor as bankrupt. If the court declares the debtor as bankrupt, liquidation of the debtor shall be performed in the standard bankruptcy procedure.

PUBLIC-PRIVATE PARTNERSHIP (PPP)

What are the possible options to implement a public-private partnership (PPP) infrastructure project in Kazakhstan?

Implementation of a PPP project in Kazakhstan is possible, generally, either under the legal framework of the PPP Law, that allows using all possible PPP structures, or the Concession Law, that provides only for one of the specific PPP structures - concession.

Below is an overview of both options:

The Concession Agreement

In Kazakhstan a relevant state authority may grant a concession to a project company by awarding a concession agreement for up to 30 years term in accordance with the Concession Law.

Granting the concession by way of a license or special enabling legislation is not permitted under Kazakh law. A concession involves mutual obligations of the parties to the concession agreement, rather than an exclusive right or authorisation issued by the authority to the project company to develop a project (as may be the case in some countries). Kazakh law classifies the concession agreement as a private law contract which combines several types of civil law agreement envisaged by the Civil Code. All concessions in Kazakhstan are one-off concessions, while routine concessions from the State or municipal authorities are not permitted. It should be noted, however, that a concessionary, that properly performed its obligations, upon expiration of the concession agreement, shall be entitled to conclude a new concession agreement without conducting a new tender, apparently, with regards to the same concession facility (see article 23.2 of the Concession Law).

According to Article 21-1 of the Concession Law, a concession agreement can be signed in one of the following four types or as a mixture thereof:

1) as a concession agreement that provides for the construction of a concession facility by the concessionary with a subsequent transfer of the concession facility into the state property;

2) as a concession agreement that provides for joint activity of the concessionary and concessor on the construction (or reconstruction) and operation of a concession facility;

3) as a concession agreement that provides for the transfer of a concession facility from the state property into trust management or into tenancy (lease) of the concessionary for the purpose of reconstruction and operation; and

4) as a concession agreement that provides for the transfer of a concession facility being in the property of the concessionary into the tenancy (lease) of the concessor or a person authorised thereby, as well as with the right of redemption of the concession facility by the concessor.

The PPP Agreement

The PPP Law, unlike the Concession Law, has enabled to implement a PPP project in one of the following two ways: either on an institutional basis (with the creation of a special purpose vehicle[5] as a joint venture) or a contractual one (without the creation of the SPV). Article 7 of the PPP Law enlists possible types of public private partnership contracts, including concession agreements, trust management of state-owned property, rental / lease of state-owned property, finance lease, contracts for the development of technologies and pre-production prototypes, for conducting pilot tests, and for short-run production, life cycle contracts and after-sales service contracts, however, the list remains open, so it is possible to enter into "other agreements, which comply with the features of public private partnership". Thus, the PPP Law allows entering into other contractual forms of PPP, even not provided by the PPP Law, but mainly meeting the public private partnership features specified in article 4 of the PPP Law.

[5] It can take a legal form of a joint-stock company or a limited liability company.

What is the difference between the PPP Law and the Concession Law?

In accordance with article 7 of the PPP Law, the concession agreements remain governed by the general provisions of the PPP Law, save for peculiarities clearly provided by the Concession Law. In our view, however, the legislator failed to make clear how these two laws (i.e. the PPP Law and the Concession Law) shall correlate and what are the distinctive features of the Concession Law that shall make it preferable option in certain cases in comparison with the implementation of a PPP project on the basis of the PPP Law. Based on our comparative analysis of the Concession Law and the PPP Law herein, we came to the conclusion, that any potential PPP project with a tenor of more than three years is preferably to implement under the PPP Law framework and that in future the Concession Law would be redundant in practice, as it does not provide any advantages.

Issue	Concession Law	PPP Law
Parties to agreement	In contrast to the PPP Law, the Concession Law provides only two parties to the concession agreement (i.e. a concessor and a concessionary).	Unlike a concession agreement, in a public private partnership agreement the parties can be both one or several public and private partners. Moreover, the parties to a public private partnership agreement can also be financial and other organisations that provide funding for public private partnership, as well as the so-called "industry operators"[6] (see article 5 of the PPP Law). Section 14 of article 1 of the PPP Law provides a concept of 'subjects of a public private partnership' (hereinafter – the 'PPP Entities'), which are defined as 'a public partner and a private partner, and other persons involved in the implementation of a public private partnership project and specified by this Law'. The concept of PPP Entities is, evidently, wider than a concept of 'parties to a PPP contract' (i.e., not every PPP Entity is a party to a PPP contract, but each party to a PPP contract is a PPP Entity).
Public Partner	Under the Concession Law, only the Republic of Kazakhstan itself[7] can be the grantor. Either the Government of Kazakhstan or local executive bodies (Akimats) or authorised state bodies can act on behalf of the Republic of Kazakhstan and execute the concession agreements.	PPP Law also provides that only the Republic of Kazakhstan can act as a public partner. Unlike the Concession Law, however, the PPP Law provides that in addition to the Government of Kazakhstan, local executive bodies (Akimats) and authorised state bodies, also so-called 'subject of quasi-public sector'[8] fifty or more percent of voting shares (participatory interests in the charter capital) of which are directly or indirectly owned by the State, can act on behalf of the Republic of Kazakhstan as a public partner and execute PPP agreements.
Private Partner	Pursuant to the Concession Law any individual, even foreigner, conducting entrepreneurial activity and (or) legal entity (except for state institutions and 'subjects of quasi-public sector' fifty or more percent of voting shares (participatory interests in the charter capital) of which are directly or indirectly owned by the State), including foreign legal entities and legal entities conducting their activity based on the agreement on joint activity (simple partnership[9]), can participate in the concession tender. One of the types of the simple partnership is a consortium[10], which can comprise only legal entities. Herein, the consortium is not a legal body but a temporary association of legal entities on the basis of an agreement on joint business activity (consortium agreement) which is created for a certain period of time or to attain a respective objective.	The PPP Law provides the concept of a private partner identical to the concept of the concessionary, save that unlike the Concession Law, PPP Law requires an individual to procure individual entrepreneur official status to be able to act as a private partner (i.e. under the Concession Law an individual does not necessarily has to have individual entrepreneur status). Since in Kazakhstan commercial organisations can only be established in the form of a joint stock company, economic partnership, production cooperative, or state enterprise, it is obvious that a private partner can be a subject of private entrepreneurship of any of the above organisational legal forms. In addition, the definition is so broad that a private partner can be, apparently, a non-profit organisation and a foreign legal entity.

[6] Industry operator as defined in section 21 of article 1 of the PPP Law can be, depending on the sector of economy in which particular PPP project is implemented, for instance, Kazakhstan Electricity Grid Operating Company (KEGOC) (national transmission grid operator), or the National Company Kazakhstan Temir Zholy (the national railway company of Kazakhstan).
[7] And not municipal entities or regions as the case may be in some other countries.
[8] As defined in section 31 of article 3.1 of the Budget Code. In general, these are companies that have the State as a shareholder.
[9] As defined in article 228 of the Civil Code
[10] As defined in article 233 of the Civil Code

The Object of Agreement	A concession object can be any property that can be recognised as the so-called "social and vital infrastructure facility included into the list[11], which shall be constructed (or reconstructed) and operated under a concession agreement." In accordance with section 2 of article 1 of the Concession Law, "social and vital infrastructure facilities are facilities [or] complexes of facilities used for the satisfaction of public needs, the securing of which is imposed on state authorities in accordance with the legislation of the Republic of Kazakhstan". The Concession Law, therefore, cannot be used for construction of, for instance, a fertilizer plant, as it is unlikely to be considered as a facility used for the satisfaction of public needs, the securing of which is imposed on state authorities.	Unlike the Concession Law, under the PPP Law practically any property can be considered as the PPP object. In accordance with section 13 of article 1 of the PPP Law, in particular, any property, including property complexes, which design, construction, development, reconstruction, modernisation and operation are carried out under the framework of the PPP project, as well as the works (services) and innovation, subject to introduction during implementation of the PPP project, can be considered as the PPP object.
The Subject of Agreement	The Concession Law is not industry-specific and, generally, state assets from any sector of the economy can be transferred under concession, save for an exhaustive list of exceptions like a backbone railway network or strategic dams (see article 4 of the Concession Law and Edict 294). In particular, pursuant to section 6 of article 1 of the Concession Law, "a concession is an activity aimed at the construction (or reconstruction) and operation of concession facilities, that shall be performed at the expense of concessionary funds or on conditions of co-funding by a concessor." A concession facility in Kazakhstan can only be for the so-called "social and vital infrastructure facilities included into the list[12], which shall be constructed (or reconstructed) and operated under a concession agreement." In accordance with section 2 of article 1 of the Concession Law, "social and vital infrastructure facilities are facilities [or] complexes of facilities used for the satisfaction of public needs, the securing of which is imposed on state authorities in accordance with the legislation of the Republic of Kazakhstan". The Concession Law, therefore, cannot be used for construction of, for instance, a fertilizer plant, as it is unlikely to be considered as a facility used for the satisfaction of public needs, the securing of which is imposed on state authorities. Importantly, the Concession Law is not applicable to subsoil use matters that are regulated by the Law 'On Subsoil and Subsoil Use' (see article 2.1 of the Concession Law). The subject of concession agreements, therefore, is the construction and (or) development of the social and vital infrastructure facilities by a private partner, at the expense of full or partial funding attracted by him, as well as the implementation by the private partner of operations and (or maintenance of the object of the agreement.	The PPP Law enables to implement PPP projects in all sectors of economy[13] and, therefore, PPP facilities under the PPP Law, unlike the Concession Law, do not necessarily have to be used for the satisfaction of public needs, the securing of which is imposed on state authorities (e.g. a fertilizer plant project can be implemented under the PPP Law). Section 6 of article 1 of the PPP Law provides for a extremely broad concept[14] of a public private partnership as a "form of cooperation between the public partner and a private partner that corresponds to the features defined by the Law". Such features include: (i) building of relations between the state partner and private partner through entering into PPP contract, (ii) medium-term or long-term PPP project implementation (from 3 to 30 years depending on peculiar features of PPP project), (iii) joint participation of the state partner and private partner in PPP project implementation, (iv) combining resources of the state partner and private partner for PPP project implementation (see article 4 of the PPP Law). The subject of the PPP agreements is not clearly defined by the PPP Law, however, it can be determined through the essential elements of the PPP agreement, stipulated in article 46 of the PPP Law. The subject of the PPP agreements is, therefore, a form of cooperation between the public partner and a private partner that corresponds to the PPP features defined by the PPP Law and that can be related to any types of activities, including construction and (or) development of infrastructure or rendering services or even, arguably, charity.
The Term of the Agreement	A concession agreement can be executed for up to 30 years and it has no lower limit (see article 23.1 of the Concession Law).	Unlike the Concession Law, the PPP Law provides that to be classified as a PPP agreement, an agreement must be for a minimum of three years and maximum thirty years (see article 4 of the PPP Law).

[11] The list of potential concession projects to be implemented in the medium-term approved by the Ministry of National Economy if the concession project of the Republican (national) level or by the local parliament (maslikhat) of the region/Nur-Sultan/Almaty city if the concession project is of municipal level (see section 24 of article 1 of the Concession Law).
[12] The approved list of potential concession projects to be implemented in the medium-term, as defined in section 24 of article 1 of the Concession Law.
[13] Article 6 of the PPP Law and Edict 172 provides for an exhaustive list of exceptions like a backbone railway network or strategic dams that cannot be transferred for implementation of a PPP project.
[14] Such excessively broad definition means that as a public private partnership in Kazakhstan may, strictly speaking, be claimed charity, grants, student loans, scholarships, joint activities with the business community on improving educational programs and plans, etc., as it is very easy to satisfy the above PPP features for the many possible forms of cooperation between the state and businesses, even if they are not related to entrepreneurial activities.

Procurement	Generally, an open single stage tender is required for selection of the concessionary, however, tenders of potential concession projects that either (i) require the collection and analysis of innovative, creative, architecture-planning, or organisational-technological solutions or innovations or (ii) require running experiments or research studies, should be conducted in two stages rather than the single stage (see article 20-1 of the Concession Law). The procedure of the transfer of objects to concession includes four key phases (see article 15.1 of the Concession Law): 1) preparation and selection of the concession proposals; 2) approval[15] of the list of objects offered for a transfer to concession; 3) conducting a concession tender with regards to a particular object of concession; and 4) determining a concessionary and entering into a concession agreement. The Concession Law provides exhaustive list of the qualification requirements for the potential concessionaries. For instance, the concessionary is obliged to have its own capital that can be used for implementation of the concession agreement purposes of no less than 10 percent of the total cost of construction and/or reconstruction of the concession facility (see article 18.1 of the Concession Law).	Unlike the Concession Law stipulating a unified procedure for concession of facilities, the PPP Law provides for a possibility to select a private partner via holding either a (i) tender (open/closed, two-stage/simplified) or (ii) on the basis of so-called "direct negotiations" (see article 31.1 of the PPP Law)[16]. The simplified procedure for the competitive selection is stipulated for the tenders held using model tender documentation and model agreements for local projects that involve amounts not exceeding the statutory limit of 4 million so-called monthly calculated indexes (equivalent of about 23 million USD as of 2016) and that are not natural monopolies projects (see article 43 of the PPP Law). Potential private partners for the simplified tender shall be selected from the Register of Potential Private Sector Partners maintained by the National Chamber of Entrepreneurs. According to the general rule, it is contemplated that a private partner will be selected via holding an open tender. In exceptional cases determined by the Government of Kazakhstan, a closed tender may be used in respect of facilities relating to Kazakhstan defence, state security or environment. The PPP Law also provides general qualification requirements to a private partner (see article 32 of the PPP Law). Unlike the Concession Law, however, the PPP Law does not require a private partner to have own capital that can be used for implementation of the PPP agreement purposes of not less than 10 percent of the total cost of construction and/or reconstruction of the PPP facility. Finally, it worth mentioning that PPP Law provides for a "competitive dialog procedure" which allows the public partner to enter into a dialogue with prequalified bidders before finalizing the tender documentation. It allows structured discussions with each of the prequalified bidders and helps identify key issues and amendments needed for the project (see section 13 of Schedule 1 of the Order 725).
Unsolicited Proposals	The Concession Law, generally, provides neither possibility to execute the concession agreement without a public tender nor on the initiative of the private partner. A potential concessionary (i.e. an individual or legal entity) who has a good potential project he wants to implement, however, has a right to file an investment proposal with the respective Sector Ministry or akimat as the matter of private initiative and, if such investment proposal would be accepted, the Sector Ministry/Akimat would prepare respective concession proposal to implement this project as a concession project. As discussed above, the preparation the concession proposals by the respective Sector Ministry or Akimat is the first of the four key phases of the procedure of the transfer of objects to concession.	Unlike the Concession Law, the adopted PPP Law establishes the possibility in certain cases of concluding an agreement without a public tender and on the initiative of the private partner. For example, a private sector partner may be selected through direct negotiations if (i) such private sector partner initiates a PPP project involving assets that it owns or has leased on a long-term basis, or (ii) the proposed PPP project is inextricably linked with the exercise of such private sector partner's exclusive rights to results of intellectual creative activity (see article 44.1 of the PPP Law). This method may be of interest to projects currently being carried out by private investors in Kazakhstan (e.g. if a businessman has a proper building that can be used to start the kindergarten etc.), and also to projects based on unique technologies owned by private investors (such as IT projects).

[15] It is the Ministry of National Economy who approves the list of the Republican level concession projects recommended for implementation in a mid-term perspective and a Maslikhat (local parliament) of the respective region/Nur-Sultan/Almaty city, who approves the list of the local municipal level concession projects (see section 24 of article 1 of the Concession Law).

[16] Generally, it shall take about 7 month from the date of initiation of the PPP project by the private partner until the date of signing of the PPP agreement, if the private partner would be selected on the basis of the direct negotiations without a tender, whereas tender procedures require more than 12 months.

Availability Payment	The Concession Law provides concepts of a so-called "concession facility availability payment" and "state subsidies" as additional sources of income and reimbursement of expenses of the concessionary as listed in article 7 of the Concession Law. The "concession facility availability payment" includes payments from the state budget as (i) compensation of certain investment expenses of the concessionary and (ii) compensations of certain operational expenses of the concessionary and, if applicable, (iii) any service fees for trust management of the state property (i.e. concession facility) or lease payment paid by state for the use of a concession facility owned by the concessionary. For each concession project the sources of income and reimbursement of a concessionary's expenses will be determined on the basis of the results of the concessionary-selection tender. Importantly, the Concession Law provides possibility to obtain an "availability payment" only for concession projects that have been classified as "socially important"[17], such as kindergartens, but not, for instance, a fertiliser plant (see article 7.3 of the Concession Law).	The PPP Law provides same as in the Concession Law wide range of methods to compensate potential investors (see article 9.2 of the PPP Law). The methods that are available for all types of PPP arrangements include the compensation of investment expenditures, operating costs and accessibility charges, all of which shall be payable out of the state budget. Importantly, unlike the Concession Law, the PPP Law does not provide requirement for the PPP project to be "socially important" to qualify for the availability payment.
State Guarantee	The Concession Law contemplates the following measures of so-called 'state support' for the concessionary to encourage private investments into the concession projects (see article 14 of the Concession Law): 1) state sureties for infrastructure bonds issued and placed in accordance with the concession agreement on the Kazakh stock exchange; 2) state guarantees for loans, the proceeds of which are to be used for concession agreement purposes; 3) transfer of the exclusive IP rights owned by the State to the concessionary; 4) provision of so-called 'in-kind grants' (e.g., land, machinery); 5) co-financing of concession projects by the State; 6) guaranteed offtake by the State of a certain amount of goods (works, services) to be produced by the concession facility. A concessionary may be granted one or several of the above measures of state support, however, if the concession facility is to remain private property when completed, rather than being transferred to state ownership, the concessionary cannot expect state support in the form of (i) state sureties for infrastructure bonds, (ii) state guarantees for loans and (iii) co-financing by the State (see article 14.2 of the Concession Law). The Concession Law also provides that the total amount of obligations of the concessor related to (i) the compensation of investment expenses of the concessionary, (ii) state surety for infrastructure bonds, (iii) state guarantees for loans, (iv) transfer to the concessionary of exclusive rights for intellectual property that belongs to the state, (v) provision of "in-kind" grants, and (vi) co-financing of the concession project, shall not exceed the concessionary's total expenditures for construction and/or reconstruction of the concession facility, incurred under the relevant concession agreement (see article 14.3 of the Concession Law).	The PPP Law contemplates identical with the Concession Law measures of so-called 'state support' though, unlike the Concession Law, the list of these measures of the 'state support' in the PPP Law is not exhaustive (see article 27.2 of the PPP Law). Another difference is that unlike the Concession Law, the PPP Law does not require the infrastructure bonds to be placed on the Kazakhstan stock exchange only (i.e. they may be placed abroad). The PPP Law also provides that the total amount of measures of state support and payments from the state budget for the purposes of financing (recovery of costs) in relation to creation and (or) reconstruction of the PPP facility, cannot exceed the total amount of expenditures for construction and (or) reconstruction of the PPP facility.

[17] Criteria for the concession project to be recognised as a socially important is stipulated in Schedule 9 of the Order 157

Risks Allocation	One of the main principals of the concession is securing proper balance of allocation of risks between concessor and concessionary (see article 3 of the Concession Law). One of the imperative terms of the concession agreement is the contractual provision on agreed risk allocation between concessor and concessionary (see article 21 of the Concession Law). Importantly, only so-called "concession projects of special importance" can benefit from possibility to have specific provision in the concession agreement to address the currency exchange risk (see section 4-2 of article 21.2 of the Concession Law). The Concession Law lacks the so-called "stability clause" that is meant to protect the concessionary from the possible changes in legislation, which is often important for attracting international creditors and investors.	One of the main principals of the PPP is securing mutually beneficial balance of allocation of risks between public and private partners (see article 3.2 of the PPP Law). As a general principle of the PPP Law, risk should be placed where it is best managed and such allocation shall be stipulated in the PPP agreement (see article 14 of the PPP Law). The PPP Law also lacks the so-called "stability clause" that is meant to protect the private partner from the possible changes in legislation, however, unlike the Concession Law, the PPP Law allows to have specific provision in the PPP agreement to address the currency exchange risk even if it is not a "PPP project of special importance".
The Right of Private Ownership of the Object of the Agreement	Upon completion of the construction phase, ownership of the relevant concession facilities, generally, shall be transferred to relevant state authority (see article 5.3 of the Concession Law). The concession agreement, however, may provide for a concessionary option to reserve the right to the concession facility upon completion of the concession project, and, therefore, under a concession agreement all available PPP schemes (i.e. BOT, BOOT, ROT, BTO, BOMT, BOO, etc) may be structured. If in accordance with the concession agreement the State provides co-financing of the concession project and (or) covers the compensation of investment expenses of the concessionary, however, the concession facility must be transferred into the state ownership (see article 5.8 of the Concession Law). Concession Law also provides that a concession facility cannot be disposed/alienated for the whole term of the concession agreement (see article 5.6 of the Concession Law). Finally, a concession agreement may not include terms, directed on alienation in a private property of a concession facility, being in the state property (see article 21-1.3 of the Concession Law).	The requirement to transfer the object of an agreement to the ownership of a public partner is, generally, not an obligatory element in the PPP agreement. If in accordance with the PPP agreement the State covers the investment expenses compensation, however, the object of public-private partnership must be transferred into the state ownership (see article 12.4 of the PPP Law). The PPP Law also provides that if the public partner gives to the private partner balance the PPP facility itself and (or) any other property for implementation of the PPP project, such transferred property shall be separated from the private partner's own property and shall be reflected in a separate accounting (see article 12.3 of the PPP Law). Unlike the Concession Law, the PPP Law generally allows the transfer of the PPP object to a third party. Article 12.2 of the PPP Law, in particular, provides that upon prior consent of its counterparty, the party to the PPP agreement has the right to transfer the PPP object and (or) any other property necessary for implementation of the PPP project to a third party, subject to requirement that such third party shall comply with obligations of the transferring party under the PPP agreement. The law also makes clear that he transmitting party still bears statutory responsibility for the actions of such third party.
Pledge of the Object of Agreement and (or) Rights of the Private Partner	In accordance with article 5.5 of the Concession Law it is prohibited to take a pledge over the concession facility itself, however, the concessionary may pledge its rights under the concession agreement, subject to the concessor's prior written consent (see article 21.6 of the Concession Law).	Unlike the Concession Law, the PPP Law generally allows the pledge over the PPP facility. If in accordance with the PPP agreement the State covers the investment expenses compensation, however, the respective object of the public-private partnership cannot be pledged (see article 12.4 of the PPP Law). A private partner may, generally, pledge its rights under the PPP agreement, subject to the public partner's prior written consent (see article 51 of the PPP Law). As a distinctive feature of the PPP Law, that provides for possibility to implement a PPP project either on an institutional basis (with the creation of the PPP company as a joint venture) or a contractual one (without the creation of the PPP company), a disposal of or pledge or other collateral over the private partner's voting shares (participatory interests) of the PPP company to third parties, requires prior consent of the public partner and vice versa (see article 54.2 of the PPP Law).

Adjustment and Revision	As a general rule, the terms of the concession agreement shall remain in force for the whole validity period of the agreement, with the exception of cases, when modification of the concession agreement is executed upon agreement of both parties (see article 21.3 of the Concession Law). A concession agreement shall provide an imperative contractual provision that shall allow the concessor to unilaterally modify the terms or even terminate the concession agreement in certain cases for public and State interest. Importantly, the concession agreement shall provide exhaustive list of such cases, that do not contradict the legislation of the Republic of Kazakhstan, in particular when such actions are committed for the purpose of securing of the national and ecological safety, health care and good morals (see article 21.4 of the Concession Law). As a remedy, the concessionary is entitled to claim form the concessor a compensation of additional expenses, related to modifications of terms of concession agreement, as well as compensate for losses incurred by a concessionary in connection with termination of the concession agreement (see article 21.5 of the Concession Law).	Unlike the Concession Law, the PPP Law does not provide for a statutory right to unilaterally modify the terms of the PPP agreement in certain cases (i.e. it can be done only upon agreement of both parties) (see article 49.1 of the PPP Law).
Early Termination	Concession agreements of the "concession projects of special importance" may (i.e. if parties agreed so) provide for contractual right to unilaterally terminate the concession agreement in case of: 1) violation of essential terms of the concession agreement, as determined in the agreement, by the concessionary; 2) violation of essential terms of the concession agreement, as determined in the agreement, by the concessor; or 3) upon force majeure circumstances. Procedure, time limits and terms of compensation of the costs and (or) expenses and (or) losses of the concessionary incurred because of early termination of the concession agreement upon above circumstances, shall be stipulated in the concession agreement (see article 21.4-1 of the Concession Law).	According to article 49.2 of the PPP Law at the request of the public partner the PPP agreement can be terminated by the court's order, only: 1) in case of material breach of the PPP agreement by the private partner 2) if the private partner is not able to implement the PPP project in view of its insolvency (bankruptcy) 3) in the interests of society and the state, including where such actions are committed in order to ensure national security, public health and morality. According to article 49.3 of the PPP Law, at the request of the private partner the PPP agreement can be terminated by the court's order only in case of material breach of the PPP agreement by the public partner and (or) state body.
Governing Law and Possibility for International Arbitration	Even though the Concession Law does not specifically prohibit to have a foreign law as the government law of the concession agreement, our interpretation of the law suggests, that only Kazakh law can be governing law of the concession agreements. Only so-called "concession projects of special importance"[18] can benefit from international arbitration clause in the concession agreement even if all parties to it are residents of Kazakhstan, but at least one shareholder[19] of the concessionary is a non-resident (see article 27.2 of the Concession Law).	The PPP Law explicitly confirms that if a private sector partner under a PPP agreement is a non-resident, the parties shall have discretion to choose the applicable law of the PPP agreement (see article 46.3 of the PPP Law). Only so-called "PPP projects of special importance" can benefit from international arbitration clause in the PPP agreement and provided the private partner is a non-resident (see article 57.2 of the PPP Law).
Direct agreement	The Concession Law stipulates the concept of "direct agreement", but it is available only for the so-called "concession projects of special importance" (see article 26-2 of the Concession Law). In case of replacement of the concessionaire at the request of the creditors, an assignment of claim and (or) debt of the concessionaire under the concession agreement can be performed without a new tender in the manner determined by the direct agreement (i.e. it is allowed to be transferred to a replacement company without going through the whole re-tendering process) (see article 21.6 of the Concession Law).	The PPP Law stipulates the concept of "direct agreement", but, same as in the Concession Law, it is available only for the so-called PPP projects of special importance[20] (see section 21 of article 1 of the PPP Law).

[18] Criteria to be recognised as a "concession project of special importance" is stipulated in Schedule 8 of the Order 157 and provides, among others, requirement to have a total value of estimated construction or reconstruction of the concession facility of not less than 4 million so-called monthly calculated indexes (equivalent of about 23 million USD as the monthly calculated index in 2016 is equal to 2,121 Tenge.). As of the beginning of February 2016 the only recognised concession project of special importance in Kazakhstan is BAKAD.

[19] As a general rule, under Kazakh law parties can refer to international arbitration only if one of such parties of an agreement itself is a non-resident (i.e. having foreign shareholder of the counterparty is, generally, not sufficient to confirm foreign nexus).

[20] Criteria to be recognised as a PPP project of special importance is stipulated in Schedule 4 of the Order 725 and provides, among others, requirement to have a total value of estimated construction or reconstruction of the PPP facility of not less than 4 million monthly calculated indexes (rough equivalent of about 23 million USD in the year of 2016).

Tariff Setting	In accordance with the Law of Kazakhstan 'On Natural Monopolies', individual entrepreneurs and legal entities operating within certain enumerated industries[21] which are recognised as 'natural monopolies' shall render so-called 'regulated services (goods, works)'. Natural monopolies in Kazakhstan cannot charge for the regulated services (goods, work) in excess of the established for all natural monopolies in Kazakhstan general tariffs. A subject of natural monopolies in Kazakhstan that executed PPP or concession agreement can have, however, its own special tariff (as a cap) to be stipulated in the PPP/concession agreement. Such tariff shall be not less than estimated costs to be incurred while rendering the regulated services plus it shall secure recovery of the so-called 'invested amount'[22] (see section 3 of the Order 743). The tariff shall be calculated based on the formula provided in Schedule 1 of the Order 743 and the term of validity of such tariff shall not be less than the term of the PPP/concession agreement (see section 34 of the Order 743).	Same as for concessions.

[21] Such industries include, among others,: 1) generation, transportation, distribution and/or supply with heat energy, 2) airport and harbor services, 3) operation of water and sewage systems etc.
[22] An "invested amount" means the sum the private partner's own capital and borrower capital for construction or reconstruction of the PPP facility (see section 2 of the Order 743).

FAQS IN OPENING AND DOING BUSINESS IN KAZAKHSTAN

1. How is business activity performed in the Republic of Kazakhstan by foreign investors?

Foreign legal entities may do their business in Kazakhstan through either registering a branch/representative office in Kazakhstan or founding a Kazakh company.
A branch/representative office is a structural subdivision of a foreign legal entity located in the territory of the Republic of Kazakhstan and is not a legal entity.

2. What is the most popular form of incorporation for a legal entity in the Republic of Kazakhstan?

The most popular form of incorporation in Kazakhstan would be a Limited Liability Partnership (LLP). For activities such as banking, insurance, and other activities in the area of finance, a Joint Stock Company (JSC) is the mandatory form of company.

The main differences between a JSC and an LLP are as follows: the minimum charter capital for a JSC is significantly higher than for an LLP and a JSC must publish the annual financial reporting. The structure of an LLP is simpler and more flexible, and can be adapted to the needs of commercial partners.

3. What types of activities require a license?

At the present time in Kazakhstan some certain types of activities in the following areas are subject to licensing: industry, use of nuclear energy, turnover of poisonous substances, transport, weapons and military equipment, communication, agriculture, public health service, gambling, finance, construction, alcohol and tobacco products and the import and export of goods.

Besides, over 300 types of activities or individual operations require other permits from competent state authorities (approvals, registrations, accreditation, examination, etc.). More than 50 types of activities can be initiated or terminated after notification of the relevant state authorities on the start or termination of these activities.

Activities subject to licensing/permission or state authorities' preliminary notification may only be performed after the relevant license/permission has been obtained or a state authority has been notified. Transactions committed without the relevant licenses or permit are null and void, i.e. are invalid whether or not they were declared as such by court. Activities performed without the relevant license may entail administrative fines and income seizure. In certain cases, the competent authorities may attribute criminal liability to the company's top officials.

4. Are there any investment preferences for investors?

Yes, there are investment preferences in Kazakhstan granted in the form of general and targeted tax preferences. General preferences can be used by any investor and can be in the form of state in-kind grants and opportunities to engage foreign labour beyond quotes and permits.

Targeted tax preferences are granted under investment contracts between investors and the Government of Kazakhstan, when implementing an investment project, an investment priority project or a special investment project.

Tax preferences can be in the form of exemption from:
- corporate income tax;
- land tax;
- property tax;
- VAT on imports;
- customs import duties;
- as well as the right to stability of the tax regime applied to investment activities.

Depending on the type of an investment project being implemented, the set of tax incentives and duration of their application may vary in time. Investors can apply targeted tax preferences together with general preferences.

5. Is trademark protection required and possible?

Registration of a trademark is made at the discretion of the applicant or right holder. Timely registration of a trademark allows you to protect the business from unfair competition, since in case of placing goods or services on the market under an unregistered trademark, any competing legal entity or individual may register your trademark for own name and prohibit its further use by your company.

Trademark registration gives the following benefits:

1) exclusive/monopoly right to use the trademark in the market for certain goods/services;
2) possibility of obtaining additional income by granting a license, assignment;

3) effective way to protect the business from other persons, which maliciously register someone else's trademark for own name in order to file claims against the original owner;
4) possibility to stop the illegal use of the trademark by third parties;
5) investment in the charter capital, and other commercial use.

The competent authority provides protection of a trademark and its owner's rights on the ground of national registration, as well as without registration according to international treaties with the Republic of Kazakhstan. The term of the national registration of a trademark is 7-8 months. Such a long term depends on the processing of documents which includes a qualification examination of the filed trademark to meet the requirements of legislation, including the search for identical and similar trademarks registered in Kazakhstan. The validity term of a trademark is 10 years with an option of subsequent extension for an indefinite period. Violation of the exclusive rights of the trademark owner entails civil, administrative and criminal liability, in accordance with the legislation of the Republic of Kazakhstan.

6. Is a work permit required in order to work in Kazakhstan?

In order to perform labour activity in the Republic of Kazakhstan, foreign citizens have to obtain a work permit. The actual period required for obtaining the work permit is 2-2.5 months after submitting the necessary documents. A work permit is not required for:

1) directors of branches or representative offices of foreign legal entities;
2) directors (deputies)of partnerships/joint stock companies with 100% foreign participation;
3) directors of organisations that concluded with the Government of the Republic of Kazakhstan investment contracts to exercise a priority right in the area of architectural, town-planning and construction activities;
4) persons, who arrived for independent employment on professions that are in demand in the priority sectors (economic activities); and
5) persons residing in the Republic of Kazakhstan.

The list of persons, who do not have to obtain work permits, is not exhaustive - we have mentioned only the most common examples.

Obtaining a work permit for a foreign employee is the responsibility of employers rather than foreign employees (save for persons arrived for independent employment on professions that are in demand in the priority sectors (economic activities). When obtaining work permits within the intra-company transfer, the employer must comply with certain requirements, such as creating new jobs for local employees, ensuring retraining and advanced training for local employees.

The failure to comply with the above requirements may lead to harsh consequences for both the employer and foreign employees.

7. Is it possible to raise monetary funds from a head company?

Yes, it is possible. However, if the amount of funds provided exceeds 500,000 USD in equivalent, the transaction must be registered with the National Bank of the Republic of Kazakhstan.

8. Are there any free economic zones in the Republic of Kazakhstan?

Yes, there are 13 special economic zones (SEZ) in Kazakhstan:

- 'Astana, The New City' in Nur-Sultan;
- 'Astana-Technopolis' in Nur-Sultan;
- 'National Industrial Petrochemical Technopark' in Atyrau region;
- 'Aktau Seaport' in Aktau, Mangistau region;
- 'Park of Innovation Technologies' in Almaty;
- 'Ontustik' in Sairam district of South Kazakhstan region;
- 'SaryArka' in Karaganda;
- 'Khorgos-East Gates' in Almaty region;
- 'Pavlodar' in Pavlodar;
- 'Taraz Chemical Park' in Jambyl region;
- 'Khorgos International Centre of Boundary Cooperation' in the Kazakhstan/China frontier zone;
- 'Qyzyljar' in Petropavl;
- 'Turkistan' in Turkestan.

These zones are exempted from income tax, land tax, fee for land use, and property tax. In addition, the sale of certain goods in the SEZ territory which are used for the specific purpose of the relevant SEZ are subject to VAT at a rate of '0%'. Thereat, goods, works, services sold in the territory of 'Khorgos International Centre of Boundary Cooperation' SEZ are subject to full VAT exemption.

In addition, participants of 'Park of Innovation Technologies' SEZ are provided with benefits regarding social tax. Participants of 'Khorgos International Centre of Boundary Cooperation' SEZ registered as individual businessmen have the right to apply exemption from individual income tax.

9. Are there any restrictions for foreign legal entities with regard to the acquisition of the ownership and land use rights to land?

In Kazakhstan, land plots can be owned by individuals and legal entities under the right of private ownership or land use. However, there is a number of restrictions for foreign citizens, stateless persons, foreign legal entities, as well as for Kazakh legal entities with foreign participation.

For example, only land intended for building or occupied by buildings or structures can be in the private ownership of foreign citizens, stateless persons, and foreign legal entities. Land plots of agricultural purpose are not provided to these categories of subjects in private ownership.

Moreover, until 31 December 2021, the state-owned land plots of agricultural purpose cannot be even rented to the above-mentioned categories of persons, as well as Kazakh legal entities, where the share of foreigners, stateless persons, and foreign legal entities is more than fifty percent. Since 1 January 2022, agricultural lands will be provided to foreigners, stateless persons, foreign legal entities, as well as legal entities, where the share of foreigners, stateless persons, and foreign legal entities is more than fifty percent, for temporary land use on lease terms for a period of up to twenty five years.

In Kazakhstan there is a ban on the provision of land plots located in the border zone to foreigners, stateless persons, citizens of the Republic of Kazakhstan, who are married to foreigners or stateless persons, and foreign legal entities and legal entities of the Republic of Kazakhstan with foreign participation.

The right of private ownership of a land plot located at the border zone and the border strip of the state border of the Republic of Kazakhstan, when a foreigner or stateless person, a foreign legal entity, or a legal entity of the Republic of Kazakhstan is participant (shareholder) of the legal entity of the Republic of Kazakhstan, shall also be alienated or reissued.

A stricter regime is established for agricultural land plots located within the border strip of the state border of the Republic of Kazakhstan. Such land plots can be provided for land use only even to citizens of the Republic of Kazakhstan not married with foreigners and stateless persons, and to legal entities of the Republic of Kazakhstan without foreign participation. Foreigners, stateless persons, as well as foreign legal entities and legal entities of the Republic of Kazakhstan with foreign participation cannot own these land plots under the land use right. Upon marriage of citizens of the Republic of Kazakhstan with foreigners or stateless persons, the right to temporary land use on agricultural land plots located in the border strip of the state border of the Republic of Kazakhstan shall be alienated.

10. When do transactions require an obligatory anti-monopoly approval?

The approval of the anti-monopoly authority is required for transactions such as the acquisition of over 50% participatory interest in a Kazakh company or companies that directly or indirectly control Kazakh companies, as well as for other transactions. The approval of the anti-monopoly authority is required, when the total balance sheet value of the assets of a purchaser or a group of purchasers (as defined in the Kazakh Entrepreneurial Code) and a target company, or the total amount of their sales of goods for the last fiscal year exceeds the limit of 10,000,000 MCI.

11. How are disputes settled in the Republic of Kazakhstan?

In Kazakhstan, there are several ways to settle disputes. Before applying to the court, it is necessary to try to settle the dispute in a pre-trial procedure, which stage is a prerequisite for applying to the court for certain categories of cases (for instance, on claims against the carrier, claims for consumers, labour disputes, etc.). Pre-trial procedure can be implemented through negotiations, including sending a formal claim to the counterparty.

If the parties fails to settle the dispute in the pre-trial procedure, they can appeal to the court, international arbitration or arbitration court, depending on the method of settlement of disputes stipulated by the parties agreement. As part of legal proceedings, the parties may conclude a settlement agreement, opt for mediation or other means of conciliation procedures in order to settle the dispute.

The dispute can be settled by the parties at any stage of the proceedings and in the court of any instance, including after the commencement of enforcement proceedings to enforce a court decision. In case of failure to settle the dispute in the court proceedings of first instance, the court considers the case on merits and makes a decision. The first instance courts consider and resolve cases within three months with the right to extend the consideration period up to four months. The decision of the first instance court may be appealed to the court of appeal within thirty days from the date of the court decision. The court of appeal reviews the case within sixty days from the date of receipt. The decision of the court of appeal may be further reviewed in the court of cassation instance within six months from the date of its entry into legal force.

12. Which disputes fall within the exclusive competence of the courts of the Republic of Kazakhstan?

The exclusive jurisdiction of Kazakh courts covers:

1) cases associated with the right to immovable property, which is situated in the Republic of Kazakhstan;
2) cases associated with the statement of claims against carriers, which have arisen from transportation agreements, if the carriers are located in the territory of the Republic of Kazakhstan;
3) divorce cases between Kazakh citizens and foreign citizens or stateless persons, if both spouses are residing in the Republic of Kazakhstan
4) cases of special action proceedings of the Civil Procedural Code of the Republic of Kazakhstan (protection of electoral rights of citizens and public associations, appealing against the decisions of state authorities, legality of the legislation, etc.)
5) investment disputes are considered by the court of Nur-Sultan, if it does not contradict the international treaties ratified by the Republic of Kazakhstan. Exclusive jurisdiction refers to the cases, when the court considers a case despite the earlier parties' agreement on changing the jurisdiction.

In addition, claims for rights to land plots, buildings, premises, structures, other objects firmly connected with the land (real estate), and for the discharge of immovable property from arrest are filed at the location of the respective objects.

13. Are arbitral awards enforceable in the Republic of Kazakhstan?

Foreign arbitral awards are recognised and enforced by the courts of the Republic of Kazakhstan in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), the European Convention on International Commercial Arbitration (1961), and the civil procedural legislation of the Republic of Kazakhstan. The Republic of Kazakhstan has also ratified the Convention on the Settlement of Investment Disputes between States and Individuals or Legal Entities of Other States (ICSID) (Washington, 1965). In order to enforce a foreign arbitral award, the applicant shall apply for recognition and enforcement of the award to the competent court at the debtor's location or at the location of the debtor's property. The application for the issue of the enforcement order shall be accompanied by a document confirming payment of the state fee amounting to 30USD, as well as the original foreign arbitral award and arbitration agreement, or duly certified copies thereof. The application for the issue of the enforcement order is considered within fifteen business days. The court notifies the debtor about the claim received from the creditor for the enforcement of the foreign arbitral award, as well as the place and time of consideration of the claim, for which the debtor can file an objection. Thereat, the Kazakh court does not review foreign arbitral awards on merits, but is limited to verification of the absence or presence of the grounds for refusal to enforce the arbitral award specified in the 1958 New York Convention, and also in the civil procedural legislation of the Republic of Kazakhstan. The court ruling to issue an enforcement order or refuse to issue can be appealed to the court of appeal, and if denied - to the court of cassation. In case of recognition and enforcement of a foreign arbitral award, the court shall issue a ruling thereon and an enforcement order that can be sent to the private bailiff, who has the appropriate license, to enforce the arbitral award.

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