DOING BUSINESS IN KAZAKHSTAN
Dear reader!

Let us introduce you this 'Doing Business in Kazakhstan' publication prepared by GRATA International law firm.

The information in the brochure is based on theoretical and practical information available as of June 2018.

The content of this brochure is intended for foreign businessmen and companies seeking to do business in Kazakhstan. The brochure provides you with the comprehensive information about the main types of businesses in Kazakhstan, including a detailed comparison table, information on the tax structure, bankruptcy, public-private partnership and frequently asked questions for starting and doing business in Kazakhstan. Please note that the legislation in Kazakhstan is subject to frequent changes.

If you have decided to do business in 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

GRATA International is an international law firm founded in 1992.

Today our clients have 250 professionals in 19 countries at their disposal. GRATA International is a global team representing different countries and nationalities that has legal advising experience in all areas of law.

GRATA International provides legal services across Kazakhstan. The firm has offices in Baku (Azerbaijan), Bishkek (Kyrgyzstan), Dushanbe (Tajikistan), Moscow (Russia) and Tashkent (Uzbekistan), a country desk in Ashgabat (Turkmenistan), and associate offices in Istanbul (Turkey), Kyiv (Ukraine), Minsk (Belarus), Novosibirsk, Rostov-on-Don, Samara, Saint Petersburg (Russia), Poland (Warsaw), Prague (Czech Republic), Riga (Latvia), Tbilisi (Georgia), Ulaanbaatar (Mongolia) and Zurich (Switzerland).

In addition to our offices, our firm has representatives in London (United Kingdom), New York (United States) and Beijing (China).

We offer our clients an access to the entire network of our diverse team that has extensive legal experience and knowledge of local business environment in any country of our presence.

GRATA International has been recognised by leading international legal directories: The Legal 500, Chambers Global, Chambers Asia-Pacific, IFLR1000, Who's Who Legal, Asialaw Profiles.

GRATA International advises clients in the following industries and areas of law around the globe:

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• Construction & Infrastructure
• Industry & Trade
• Mining
• Oil & Gas
• Pharmaceuticals & Healthcare
• Technology, Media & Telecommunications
• Transport
• Corporate Law
• Contract Law
• Dispute Resolution
• Environmental Law
• Finance & Securities
• Data Protection & Privacy
• Intellectual Property
• International Trade, Customs & WTO Law
• Labour Law
• Licenses & Permits
• Project Finance & Public-Private Partnership (PPP)
• Real Estate
• Restructuring & Insolvency
• Subsoil Use
• Tax Law

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

GRATA International has an insurance certificate for voluntary insurance of civil liability in performance of legal activities.
THE MAIN TYPES OF DOING BUSINESS IN KAZAKHSTAN

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

Limited Liability Partnerships (LLP (TOO in Russian))
An LLP 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 for medium and large businesses, and 0 KZT for small businesses, while the interest of participants is generally proportional to their contributions. The participants shall have the priority right with respect to the interests of the outgoing participants. The bodies of a limited liability partnership are:

1) the supreme body of the partnership is a sole participant or the general meeting of participants;
2) the executive body (sole or collective) of the company.

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

The 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 founding documents of an LLP. In addition, the supervisory board may be formed in the company, which, however, is not a prerequisite. In contrast to foreign partnerships, Kazakhstani LLPs are legal entities being an equivalent of a limited liability company (LLC).

Joint-Stock Companies (JSC (AO in Russian))
A JSC 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 ringfenced 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:
1) the supreme body is a sole shareholder or the general meeting of shareholders;
2) the management body is the board of directors;
3) the executive body - sole or collective.

The General Meeting of Shareholders is the supreme governing body of a JSC and shall be convened at least once a year. The competence of the Sole Shareholder/General Meeting of Shareholders is to make a decision on the most priority matters such as changes to the charter, increase in shares, the 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 a JSC on behalf of shareholders to the extent not related to the latest management of the company or shareholders competence, such as making the decision to allocate shares, to regulate the internal

1 An MCI is a monthly calculation index provided by the Law 'on Budget' and applied to calculate allowances and other social payments, as well as penalties, taxes and other payments.
audit service performance, to open branches and representative offices, to elect the executive body, to approve large transactions, etc.

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 subdivisions. A representative office has no right to generate income; it only represents the parent company's interests. The branches can perform both: the functions of a representative office and all or a part of the functions of the parent company, including doing business. The representative offices and branches operate under regulations and are 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 the registration authorities of the Ministry of Justice. The registration of the legal entities, the branches and the representative offices of the legal entities/companies usually takes 1 business day; in practice, however, this may take around a week. The state registration with justice authorities also implies automatic registration with tax authorities. Currently, there is no need for separate registration with the statistical authorities.

In accordance with the recent changes in the legislation, the online registration of the legal entities has been made 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, sealed, notarised, and legalised or apostilled.

**Location (Legal Address)**

A legal entity's location is the address specified in its founding documents. In accordance with Kazakhstani 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.

**Seal and Bank Accounts**

Straight after the registration of the company, the branch or the representative office, a seal thereof must be made with an authorised local company.

The bank accounts can be opened in local Kazakhstani banks, including subsidiaries of foreign banks established in 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 offshore (foreign) banks as well.
<table>
<thead>
<tr>
<th>Criteria</th>
<th>Representative office</th>
<th>Branch</th>
<th>Limited Liability Partnership (LLP)</th>
<th>Joint Stock Company (JSC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The legal status</td>
<td>Not a legal entity</td>
<td>Not a legal entity</td>
<td>Legal entity</td>
<td>Legal entity</td>
</tr>
<tr>
<td>The definition</td>
<td>A representative office is a separate subdivision of a legal entity situated outside of its location, which protects and represents the interests 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.</td>
<td>A 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 created it and operates on the basis of the regulations approved by this legal entity.</td>
<td>An LLP is a partnership established by one or several individuals or legal entities, where the charter capital is divided into interests the sizes of which are stipulated in the founding documents. The participants of the LLP shall not be liable for its obligations nor bear the risk of losses associated with the activities of the LLP to the extent of their contributions.</td>
<td>A JSC is a legal entity, which issues shares for the purpose of raising capital for its activities.</td>
</tr>
<tr>
<td>The founders</td>
<td>A parent company (local or foreign)</td>
<td>A parent company (local or foreign)</td>
<td>The founders of the LLP can be one or more individual(s) and/or legal entity(ies) (local or foreign). Restriction: The LLP may not have another Kazakhstani business partnership consisting of a sole participant as a sole participant of an LLP.</td>
<td>The founders of the JSC are individuals and/or legal entities (local or foreign), or a sole person.</td>
</tr>
<tr>
<td>The potential activities</td>
<td>Limited to protection and representation of the interests of the legal entity. Has no right to engage in business activities.</td>
<td>Limited to activities of the parent company. May engage in business activities, if such activities are permitted for the parent company. Certain activities can require licensing.</td>
<td>Not limited; certain activities, however, can require obligatory licensing (such activities can only be performed upon obtaining the relevant license). There are restrictions related to the activities that can be performed by the LLP that is 100%-owned by non-residents. These restrictions apply to security activities, as well as the activities in mass media. Companies engaged in insurance activities, as well as market entities that take a monopoly position in the market, cannot combine their core activities with other business activities.</td>
<td>Not limited; certain activities, however, can require obligatory licensing (such activities can only be performed upon obtaining the relevant license). There are restrictions by activities. Companies engaged in insurance activities, as well as pension funds and market entities that take a monopoly position in the market, cannot combine their core activities with other business activities.</td>
</tr>
<tr>
<td>The relevant foundation documents</td>
<td>The parent company approves the regulations of the representative office. The regulations of the representative office of foreign companies, non-profit organisations and joint-stock companies shall be submitted to the justice authorities.</td>
<td>The parent company approves the regulations of the branch. The regulations of the branch of foreign companies, non-profit organisations and joint-stock companies shall be submitted to the justice authorities.</td>
<td>The Articles of Association and Founders Agreement (when the LLP is founded by more than one founder) are approved by the decision of the founder(s) and signed by an authorised person; the founding documents are not required to be submitted to the justice authorities.</td>
<td>The Articles of Association and Founders Agreement (decision of the sole founder). The Articles of Association shall be submitted to the justice authorities.</td>
</tr>
<tr>
<td>The appropriate classification of a business entity</td>
<td>Not provided for representative offices, while legislative provisions apply to representative offices according to the status of the parent company’s business entity (in the absence of classification it is generally considered as a medium or large business entity).</td>
<td>Not provided for branches, while legislative provisions apply to branches according to the status of the parent company’s business entity (in the absence of classification it is generally considered as a medium or large business entity).</td>
<td>Micro-business entities are small businesses engaged in private business with an annual average number of employees of not more than 15 persons or an average annual income of not more than 30 000 MCI. Small business entities are the 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. Small business entities cannot be legal entities engaged in certain activities, such as those related to drug trafficking, psychotropic substances and precursors; manufacture and wholesale of excisable products; grain storage at grain reception points; etc. Medium business entities are the legal entities engaged in private business, with an annual</td>
<td></td>
</tr>
<tr>
<td><strong>The taxpayer Status in Kazakhstan</strong></td>
<td>Is a taxpayer.</td>
<td>Is a taxpayer.</td>
<td>Has the resident status and is a taxpayer.</td>
<td>Has the resident status and is a taxpayer.</td>
</tr>
<tr>
<td><strong>The tax regime</strong></td>
<td>If operations of the representative office of a foreign legal entity are limited in Kazakhstan due to preparatory and auxiliary activities and do not form a permanent establishment, the representative office does not have obligations to pay corporate income tax and value-added tax.</td>
<td>If operations of the branch form 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 obligations at a rate of 12%.</td>
<td>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 Kazakhstani legal entity as a tax resident must pay taxes in Kazakhstan from all of its global income, i.e. received both in and outside of Kazakhstan. As a general 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 Kazakhstani legal entity between its shareholders or participants can be fully exempted from corporate income tax, subject to certain conditions. The Tax Code provides for separate tax regimes for small businesses, subsoil users, producers of agricultural products and gambling business.</td>
<td></td>
</tr>
<tr>
<td><strong>Are Tax Registration and obtaining the Individual Identification Number (IIN) for the Director required?</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>The work permits</strong></td>
<td>Required for all foreign employees/workers other than the head of the representative office.</td>
<td>Required for all foreign employees/workers other than the head of the branch. However, branches are additionally obligated to 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 provisions of the relevant convention on avoidance of double taxation. The branch must pay taxes in Kazakhstan from the income earned in connection with activities in Kazakhstan.</td>
<td>Required for all foreign employees working in Kazakhstan, including the director, except for the cases stipulated by the legislation of the Republic of Kazakhstan.</td>
<td>Required for all foreign employees working in Kazakhstan, including the director, except for the cases stipulated by the legislation of the Republic of Kazakhstan.</td>
</tr>
<tr>
<td><strong>The extent of the members' liability</strong></td>
<td>The parent company shall be liable for the obligations of its representative office to the fullest extent.</td>
<td>The parent company shall be liable for the obligations of its branch to the fullest extent.</td>
<td>As a general rule, the 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.</td>
<td>As a general rule, the 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.</td>
</tr>
<tr>
<td><strong>Is Charter Capital Required?</strong></td>
<td>Not required.</td>
<td>Not required.</td>
<td>The required minimum of the charter capital is 100-fold the amount of the MCI for medium and large businesses; 0 tenge for small businesses. Contributions to the charter capital of the LLP can be money, securities, belongings, property rights, including the land use right, and the intellectual property right and other assets. It is not allowed to make contributions in the form of personal non-property rights and other intangible benefits, as well as by way of setting-off the members' claims to the LLP.</td>
<td>The required minimum of the charter capital is 50 000-fold the amount of the MCI.</td>
</tr>
<tr>
<td>The terms of the state registration</td>
<td>Within one (1) business day following the day of filing the application with the necessary documents for representative offices of legal entities (in practice the term is up to 3 business days). Within fourteen (14) business days following the day of filing the application with the necessary documents for the representative offices of non-profit entities, foreign legal entities and joint-stock companies.</td>
<td>Within one (1) business day following the day of filing the application with the necessary documents for branches of legal entities. (In practice, the term is up to 3 business days). Within fourteen (14) business days following the day of filing the application with the necessary documents for the branches of non-profit entities, foreign legal entities and joint-stock companies.</td>
<td>Within one (1) business day following the day of filing the application with the necessary documents. (In practice, the term is up to three business days).</td>
<td>Within fourteen (14) business days following the day of filing the application with the necessary documents.</td>
</tr>
<tr>
<td>The state (record) registration fee</td>
<td>6.5 MCI for the representative offices of medium and large businesses and foreign legal entities. 2 MCI for the representative offices of small businesses.</td>
<td>6.5 MCI for the branches of medium and large businesses and foreign legal entities. 2 MCI for the branches of small businesses.</td>
<td>6.5 MCI for large businesses.</td>
<td>No state fee is required for small and medium enterprises.</td>
</tr>
<tr>
<td>The Supreme Authorised Body</td>
<td>The Head (director) of the representative office.</td>
<td>The Head (director) of the branch.</td>
<td>1) The Supreme Body is the General Meeting of Participants (for the LLP, where 100% interest in the charter capital is held by a sole participant, such a participant is The Supreme Managerial Body); 2) The Executive Body is a sole or collective body, which is named by the Articles of Association of the LLP; 3) There can also be the supervisory and auditing bodies (The Supervisory Board, The Audit Commission (Auditor)).</td>
<td>1) The Supreme Body is the General Meeting of Shareholders (for the JSC, where all the voting shares are held by a sole shareholder, such a shareholder is the Supreme Body); 2) The Management Body is the Board of Directors; 3) The 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.</td>
</tr>
<tr>
<td>An Accountant</td>
<td>Not obligatory but recommended.</td>
<td>Not obligatory but recommended.</td>
<td>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).</td>
<td>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).</td>
</tr>
<tr>
<td>Opening Accounts in Foreign Banks Abroad</td>
<td>No restrictions. May make settlements in foreign currency both with residents and non-residents.</td>
<td>No restrictions. May make settlements in foreign currency both with residents and non-residents.</td>
<td>Only allowed with further obligatory notification to 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.</td>
<td>Only allowed with further obligatory notification to 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.</td>
</tr>
<tr>
<td>The Legal Address</td>
<td>The Legal address confirmation is not required.</td>
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<td>The Legal address confirmation is not required.</td>
<td>The Legal address confirmation is not required.</td>
</tr>
<tr>
<td>Advantages</td>
<td>1) Simplified incorporation procedure; 2) the charter capital is not required to be formed; 3) no restrictions on opening a bank account outside of the Republic of Kazakhstan and settlements in a foreign currency.</td>
<td>1) Simplified incorporation procedure; 2) the charter capital is not required to be formed; 3) no restrictions on opening a bank account outside of the Republic of Kazakhstan and settlements in a foreign currency.</td>
<td>1) The activities are not restricted; certain activities, however, require licenses and permits; 2) the liability is generally limited to the participants' interests; 3) a flexible management system; 4) Kazakhstani residence; 5) has the right to participate in tenders. When participating in tenders, the company is recognised as a Kazakhstani supplier of goods and services; 6) no state fee for registration for small and medium businesses required;</td>
<td>1) The activities are not restricted; certain activities, however, require licenses and permits; 2) the liability is generally limited to the shareholders' value of shares; 3) Kazakhstani residence; 4) has the right to participate in tenders. When participating in tenders, the company is recognised as a Kazakhstani supplier of goods and services; 5) no state fee for registration for small and medium businesses required; 6) prompt state registration.</td>
</tr>
</tbody>
</table>
INSOLVENCY AND BANKRUPTCY

The Law 'On Rehabilitation and Bankruptcy' ('Bankruptcy Law') adopted on 7 March 2014 provides for the following insolvency regimes applicable to the insolvent debtor: insolvency settlement, accelerated rehabilitation, rehabilitation, bankruptcy and simplified bankruptcy. 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.

Before the debtor and/or the creditor file(s) a petition with a court to apply for rehabilitation procedure and/or declaring the debtor bankrupt, the debtor may make a decision on the settlement of its insolvency. Please note that when the court satisfies the debtor's petition for the insolvency settlement, the debtor shall enter into an insolvency settlement agreement with all creditors within two months from the date of entry into legal force of the respective court decision. Thereat, the agreement shall be signed for the period of not more than three years and shall provide for the conditions, the procedure, the methods, and the terms of obligations performance by the debtor to the creditors. The agreement shall be also approved by the court. From the date of entry into legal force of the court decision on approval of the insolvency settlement agreement, the following consequences occur:

1) the termination of accrual of penalty (late fee, fines) for all types of the debtor's arrears;
2) the release of all state authorities' restrictions on the debtor's accounts without relevant decisions of the authorities that imposed them;
3) the 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 with no account of compensation claims for non-pecuniary damage, which became due after the conclusion of the insolvency settlement agreement;
4) the 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 accelerated rehabilitation and rehabilitation are intended to rescue the debtor; a final liquidation (i.e., bankruptcy) guillotines the debtor. Accelerated rehabilitation can be initiated by the debtor in the court proceeding provided that no rehabilitation or bankruptcy proceeding has been initiated against the debtor and the debtor is insolvent or will not be able to meet his or her monetary obligations on the due date within the next twelve months.
Accelerated rehabilitation is conducted based on a rehabilitation plan that shall be agreed upon by the debtor and its affected creditors prior to the initiation of the court proceeding. The interests of other (i.e., not affected by initiation of the accelerated rehabilitation procedure) creditors shall, however, be taken into consideration in the rehabilitation plan. The rehabilitation plan shall provide for the specific measures on the debtor's solvency restoration, the prevention of insolvency due to the impossibility to discharge obligations before the deadline, and the repayment schedule for debts and/or future payments to the groups of homogeneous creditors participating in the accelerated rehabilitation procedure. The duration of the accelerated rehabilitation is up to two years and may be extended by an additional six months at the request of the debtor with the consent of the affected creditors. Upon the accelerated rehabilitation decision by the court and approval of the rehabilitation plan, the following main legal implications arise:

1) the debtor may not use and realise its property except in the course of regular commercial operations if provided by the rehabilitation plan or upon consent of the affected creditors;
2) a stay of enforcement of court decisions or arbitration awards issued earlier upon claims of affected creditors;
3) the affected creditors cannot file for bankruptcy of the debtor; and
4) a withdrawal of money from the debtor's account and foreclosure of the debtor's property is prohibited.

The payments to the affected creditors are made according to the schedule included in the rehabilitation plan. The payments to any other (i.e., not affected) creditors are made in the course of regular commercial operations of the debtor (i.e., none of the implications discussed above shall be applicable). Any creditor that is not an affected creditor may file an application to the court for the bankruptcy of the debtor. The rehabilitation may be initiated in the court proceeding by either the debtor itself or its creditors.

The accelerated rehabilitation procedure shall be terminated by the court in cases of:
1) the representation of the final report approved by the creditors' meeting;
2) the expiry of the term of the accelerated rehabilitation procedure, if there are no grounds for the term extension;
3) the detection of violations during the execution of the rehabilitation plan, as well as the provisions of the 'Bankruptcy Law' on the basis of the decision of the creditors' meeting upon application of the person authorised by the meeting;
4) the filing application by the creditor, to whom the debtor does not make payments under the repayment schedule within the term of more than three months;
5) initiation of bankruptcy case upon application of the creditor not related to the group of homogeneous creditors involved in the rehabilitation plan, or the creditor, whose claims are occurred during the period of conducting accelerated rehabilitation procedure;
6) filing application by the creditor included to the group of homogeneous creditors involved in the rehabilitation plan, whose rights and legal interests are infringed and/or not considered by a rehabilitation plan.

The debtor may file for rehabilitation if he or she is either insolvent or unable to meet his or her monetary obligations on the due date within the next 12 months. The creditors may file for rehabilitation if the debtor is insolvent. An insolvent debtor is entitled to apply to the court for rehabilitation if the debtor is insolvent.

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1 Both procedures may be applied to commercial entities only.
2 The debtor is insolvent if one or more of the following conditions are met: a) non-payment under health or life damage obligations, obligations to its employees, social insurance and pension payments, payments under copyright agreements within three months after they became due for the amount of 100 monthly calculated indexes (approximately 735 USD); b) non-payment under tax and other budget obligations within four months after they became due for the amount of 150 monthly calculated indexes (approximately 1,100 USD); c) non-payment by a debtor - legal entity under any other obligations within three months after they became due for the total amount of 1,000 monthly calculated indexes. The monthly calculated index is a coefficient used for calculation of benefits and other social payments and for the application of fines, sanctions, taxes and other payments according to Kazakh legislation. The amount of the monthly calculated index is established annually by the Law of the Republic of Kazakhstan 'On the State Budget'. The monthly calculated index for 2019 is set to be equal to 2,525 tenge.
3 Accelerated rehabilitation would not affect all of the creditors of the debtor, but only certain groups of creditors with 'homogeneous' claims (e.g., bondholders, lenders under loans, etc.) that the debtor decided to include in the rehabilitation plan. At least 50 per cent plus one vote of total amount of the claims of each of the affected group of creditors with the homogeneous claims is required for due approval of the accelerated rehabilitation.
court for the suspension of the bankruptcy proceedings and the introduction of the rehabilitation procedure within ten 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. Unlike the accelerated rehabilitation, the rehabilitation plan shall be approved by the creditors within three months from the moment of the court ruling on the introduction of the rehabilitation procedure. The duration of the accelerated rehabilitation shall be indicated in the rehabilitation plan and may be extended by an additional six months at the request of the rehabilitation manager with the consent of the creditors. Unlike the accelerated rehabilitation, within the rehabilitation procedure, the creditors may decide to deprive existing shareholders and pass management over the debtor to a specially appointed rehabilitation manager. The legal implications of the introduction of rehabilitation by the court are generally the same as for the accelerated rehabilitation discussed above. The main difference is that all creditors (unlike only affected creditors in accelerated rehabilitation) may make their claims only within the rehabilitation proceeding and may not file for bankruptcy. Bankruptcy may be initiated in the court proceeding by the debtor itself, the creditors, the prosecutor, the rehabilitation manager, or if, in the course of rehabilitation, it turns out that rehabilitation is not possible, the state body responsible for tax and other payments to the budget. The duration of a bankruptcy proceeding shall not exceed nine months and may be extended by an additional three months at the request of the bankruptcy manager with the consent of the creditors' meeting. A resolution of the court on the bankruptcy of the debtor results in the following legal implications:

1) the debtor may not use and sell his/her property and repay debts except in the course of regular commercial operations;
2) all debt obligations shall be considered as due;
3) the accrual of fines and interests on all obligations of the debtor is terminated;
4) all court disputes of a proprietary nature in relation to the debtor are terminated;
5) all claims may be made against the debtor only in a bankruptcy proceeding (except the claims where the third parties are acting as guarantors or pledgers);
6) 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 the 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:

1) collect details on the financial status of the debtor on the basis of documents of the accounting statements and the financial statements for the purpose of confirming the existence or absence of signs of its insolvency up to the issuance of the court decision;
2) provide the court with the opinion on debtor's financial status;
3) send a notice on initiation of a bankruptcy case and of a procedure for filing claims by creditors to the competent authority in Kazakh and Russian languages to post on the competent authority's website within two business days from the date of issuance of the appointment regulation by the court;
4) ensure the control of assets of the debtor for the purpose of non-admission of their transfer by a property owner of the debtor, founders (participants) during the period of a legal proceeding;
5) consider the application of the debtor on the coordination of transaction outside the regular commercial operations within five business days.

The 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 a procedure for filing requirements by the creditors in Kazakh and Russian languages to post on the website of the competent authority. The creditors must file their claims to a debtor within a month from the date of the 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. The 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. The temporary administrator shall, within three business days from the date of entering into force of the court decision on declaring the debtor as bankrupt, send the register of the creditors' claims to the competent authority to post on the 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 bankrupt.

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

Upon the resolution of the court on the bankruptcy of the debtor, the bankruptcy manager sells 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:

1) the administrative and court expenses;
2) the claims under health or life damage obligations, the recovery of alimony, the payment of remuneration and the compensations to persons who worked under the employment agreements, the social insurance and pension payments, the payments under the copyright agreements;
3) the secured creditors' claims;
4) the tax and other budget payment claims;
5) the claims of other creditors;
6) the claims for damages and fines; and
7) the distribution of the remainder, if any, to the bankrupt entity's shareholders.

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. The liquidation of a bankrupt is deemed completed and a bankrupt - liquidated after making the relevant entry in the state registers of legal entities and businessmen, except for cases provided for by the 'Bankruptcy Law'.

A simplified bankruptcy procedure is also worth to note, which is applied in respect of a legal entity under liquidation. The liquidation of the debtor without the initiation of bankruptcy proceeding shall be conducted by the competent authority in respect of an absent debtor upon application of a creditor or prosecutor. In case of absence of assets of a bankrupt, as well as transactions to be declared invalid, the competent authority shall provide the final statement and the liquidation balance sheet to the creditors' meeting within a month for coordination, which shall be further submitted to the court for approval. Upon approval of the final statements and liquidation balance sheet by the court, the competent authority shall close bank accounts of a bankrupt, deliver the forms of taxpayer certificate and the certificate on registration on value-added tax (when available).

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

The implementation of a PPP project in Kazakhstan is possible, generally, under either the legal framework of the 'PPP Law', that allows using all the 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 accordance with the 'Concession Law', a relevant state authority may grant a concession to a project company by signing a concession agreement for up to 30 years.

Granting the concession by way of a license or a special enabling legislation is not permitted under the Kazakh law. A concession involves mutual obligations of the parties to the concession agreement, rather than an exclusive right or an 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 a concessee 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 concessee or a person authorised thereby, as well as with the right of redemption of the concession facility by the concessee.

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 as a joint venture) or a contractual one (without the creation of the SPV). Article 7 of the 'PPP Law' enlists possible types of the 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 the article 7 of the 'PPP Law', the concession agreements remain governed by the general provisions of the 'PPP Law', except for cases 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 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' are. 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 preferable 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.

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<td><strong>Parties to agreement</strong></td>
<td>In contrast to the 'PPP Law', the 'Concession Law' provides for only two parties to the concession agreement (i.e. a concessor and a concessionary).</td>
<td>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 a public-private partnership, as well as the so-called &quot;industry operators&quot; (see article 5 of the 'PPP Law'). Section 14 of article 1 of the 'PPP Law' provides for 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).</td>
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<td><strong>The Public Partner</strong></td>
<td>Under the 'Concession Law', only the Republic of Kazakhstan itself can be the grantor. Either the Government of Kazakhstan or the local executive bodies (Akimats, i.e. city administrations) or the authorised state bodies can act on behalf of the Republic of Kazakhstan and execute the concession agreements.</td>
<td>'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, the local executive bodies (Akimats i.e. city administrations) and the authorised state bodies, also so-called 'subject 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, can act on behalf of the Republic of Kazakhstan as a public partner and execute PPP agreements.</td>
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<td><strong>The Private Partner</strong></td>
<td>Pursuant to the 'Concession Law' any individual, even a foreigner, conducting entrepreneurial activity and (or) a 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 the foreign legal entities and the legal entities conducting their activity based on the agreement on joint activity (simple partnership), can participate in the concession tender. One of the types of a simple partnership is a consortium&quot;, which can only comprise of legal entities. Herein, the consortium is not a legal body, but a temporary association of legal entities based on the agreement of a joint business activity (a consortium agreement), which is created for a certain period of time or to attain a respective objective.</td>
<td>The 'PPP Law' provides for the concept of a private partner similar to the concept of the concessionary, except that unlike the 'Concession Law', the 'PPP Law' requires an individual to obtain an individual entrepreneur official status to be able to act as a private partner (i.e. under the 'Concession Law' an individual does not necessarily have to have the individual entrepreneur status). Since in Kazakhstan commercial organisations can only be established in the form of a joint stock company, an economic partnership, a production cooperative, or a 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 apparently can be a non-profit organisation and a foreign legal entity.</td>
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### CONCESSION LAW

#### 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, which shall be constructed (or reconstructed) and operated under a concession agreement”. In accordance with section 2 of article 1 of the ‘Concession Law’, “the social and vital infrastructure facilities are the 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 the construction of, for instance, a fertiliser 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.

#### 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, except 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”, which shall be constructed (or reconstructed) and operated under a concession agreement”. In accordance with section 2 of article 1 of the ‘Concession Law’, “the social and vital infrastructure facilities are the 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 the construction of, for instance, a fertiliser 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.

### PPP LAW

Unlike the ‘Concession Law’, practically any property can be considered as the PPP object under the ‘PPP Law’.

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 ‘PPP Law’ enables to implement PPP projects in all sectors of the economy and, therefore, the 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 fertiliser plant project can be implemented under the ‘PPP Law’). Section 6 of article 1 of the ‘PPP Law’ provides for an extremely broad concept 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 by entering into PPP contract, (ii) medium-term or long-term PPP project implementation (from 3 to 30 years depending on peculiar features of the PPP project), (iii) joint participation of the a state partner and a 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.

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1. An 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).
2. As defined in section 31 of article 3.1 of the Budget Code. In general, these are the companies that have the State as a shareholder.
3. As defined in article 228 of the Civil Code.
4. As defined in article 233 of the Civil Code.
5. As defined in article 231 of the Civil Code.
6. 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 State (national) level or by the local parliament (maslikhat) of the region/Astana/Almaty if the concession project is of municipal level (see section 24 of article 1 of the ‘Concession Law’).
7. 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’.
8. 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.
9. 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.
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<tr>
<td>The Term of the Agreement</td>
<td>A concession agreement can be executed for up to 30 years and it has no minimum duration (see article 23.1 of the 'Concession Law').</td>
<td>Unlike the 'Concession Law', in accordance with the 'PPP Law', the agreement is classified as a PPP agreement, if it is concluded for a minimum of three years and a maximum of thirty years (see article 4 of the 'PPP Law').</td>
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<td>Procurement</td>
<td>Generally, an open single stage tender is required to select 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) the preparation and selection of the concession proposals; 2) the approval of the list of objects offered for a transfer to concession; 3) the concession tender conducted with regards to a particular object of concession; and 4) the determination of a concessionary and entering into a concession agreement. The 'Concession Law' provides an exhaustive list of the qualification requirements for the potential concessionaries. For instance, the concessionary is obliged to have his own capital that can be used for implementation of the concession agreement purposes of no less than 10 per cent of the total cost of construction and (or) reconstruction of the concession facility (see article 18.1 of the 'Concession Law').</td>
<td>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 &quot;direct negotiations&quot; (see article 31.1 of the 'PPP Law'). 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 the so-called monthly calculated indexes (equivalent of about 26 million USD as of 2019) and that are not natural monopolies projects (see article 43 of the 'PPP Law'). The 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 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 per cent of the total cost of construction and/or reconstruction of the PPP facility. Finally, it is worth mentioning that the 'PPP Law' provides for a &quot;competitive dialogue procedure&quot; 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).</td>
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<tr>
<td>Unsolicited Proposals</td>
<td>The 'Concession Law', generally, provides neither the 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 an investment proposal is accepted, the Sector Ministry or Akimat would prepare the respective concession proposal to implement this project as a concession project. As discussed above, the preparation of 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 a concession.</td>
<td>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 he 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).</td>
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15 It is the Ministry of National Economy who approves the list of the State level concession projects recommended for the implementation in a mid-term perspective and a Maslikhat (local parliament) of the respective region/Astana/Almaty, 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 months 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 is selected on the basis of the direct negotiations without a tender, whereas the tender procedures require more than 12 months.
### The Availability Payment

The 'Concession Law' provides for the 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 for the possibility to obtain an “availability payment” only for concession projects that have been classified as “socially important”\(^\text{17}\), such as kindergartens, but not, for instance, a fertiliser plant (see article 7.3 of the 'Concession Law').

The 'PPP Law' provides for the same, as in the 'Concession Law', a 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 for a requirement for the PPP project to be “socially important” to qualify for the availability payment.

### The State Guarantee

The 'Concession Law' contemplates the following measures of the so-called 'state support' for the concessionary to encourage private investments into the concession projects (see article 14 of the 'Concession Law'):

1. the state sureties for infrastructure bonds issued and placed in accordance with the concession agreement on the Kazakh stock exchange;
2. the state guarantees for loans, the proceeds of which are to be used for the concession agreement purposes;
3. the transfer of the exclusive IP rights owned by the State to the concessionary;
4. the provision of the so-called ‘in-kind grants’ (e.g., land, machinery);
5. co-financing of concession projects by the State;
6. the 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 the state support in the form of (i) the state sureties for infrastructure bonds, (ii) the 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) the state surety for infrastructure bonds, (iii) the state guarantees for loans, (iv) transfer to the concessionary of exclusive rights for intellectual property that belongs to the state, (v) the provision of “in-kind” grants, and (vi) co-financing of the concession project, shall not exceed the concessionary's total expenditures for the 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 similar to the 'Concession Law' measures of the 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 traded on the Kazakhstan stock exchange only (i.e. they may be traded 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.

\(^{17}\) The criteria for the concession project to be recognised as a socially important is stipulated in Schedule 9 of the Order 157.
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<td><strong>Risks Allocation</strong></td>
<td>One of the main principals of the concession is securing the proper balance of risks allocation between the concessor and the 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 the concessor and the concessionary (see article 21 of the 'Concession Law'). Importantly, only the so-called “concession projects of special importance” can benefit from the possibility to have a 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.</td>
<td>One of the main principals of the 'PPP Law' is securing the mutually beneficial balance of risks allocation between the public and the private partners (see article 3.2 of the 'PPP Law'). As a general principle of the 'PPP Law', the risks 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 &quot;PPP project of special importance&quot;.</td>
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<td><strong>The Right of Private Ownership of the Object of the Agreement</strong></td>
<td>Upon completion of the construction phase, the 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'). The 'Concession Law' also provides that a concession facility cannot be disposed alienated for the whole duration 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').</td>
<td>The requirement to transfer the object of an agreement to the ownership of a public partner is, generally, not an obligatory element of the PPP agreement. If in accordance with the PPP agreement the State covers the investment expenses compensation, however, the object of the public-private partnership must be transferred into the state ownership (see article 12.4 of the 'PPP Law'). The 'PPP Law' also provides for that if the public partner transfers to the private partner the PPP facility itself as an asset in his financial statement 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 the transmitting party still bears statutory responsibility for the actions of such third party.</td>
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<tr>
<td><strong>Pledge of the Object of Agreement and (or) Rights of the Private Partner</strong></td>
<td>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 his rights under the concession agreement, subject to the concessor’s prior written consent (see article 21.6 of the 'Concession Law').</td>
<td>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 his 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').</td>
</tr>
<tr>
<td><strong>Adjustment and Revision</strong></td>
<td>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').</td>
<td>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 upon agreement of both parties only) (see article 49.1 of the 'PPP Law').</td>
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<tr>
<td>ISSUE</td>
<td>CONCESSION LAW</td>
<td>PPP LAW</td>
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<td>A concession agreement shall provide for an imperative contractual provision that shall allow the concesee 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 an exhaustive list of such cases, that does not contradict the legislation of the Republic of Kazakhstan, in particular when such actions are committed for the purpose of securing 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 to form the concesee a compensation of additional expenses, related to modifications of terms of the concession agreement, as well as compensate for losses incurred by a concessionary in connection with the termination of the concession agreement (see article 21.5 of the 'Concession Law').</td>
<td>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 his 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.</td>
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<tr>
<td>The 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 concesee; or 3) upon force majeure circumstances. The 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').</td>
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<td>Even though the 'Concession Law' does not specifically prohibit having a foreign law as the governing law of the concession agreement, our interpretation of the law suggests, that only Kazakh law can be governing law of the concession agreements. Only the so-called “concession projects of special importance” can benefit from international arbitration clause in the concession agreement even if all parties to it are the residents of Kazakhstan, but at least one shareholder of the concessionary is a non-resident (see article 27.2 of the 'Concession Law').</td>
<td>The 'PPP Law' explicitly confirms that if a private sector partner under a PPP agreement is a non-resident, the parties shall have the discretion to choose the applicable law of the PPP agreement (see article 46.3 of the 'PPP Law'). Only the 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').</td>
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<tr>
<td>The 'Concession Law' stipulates the concept of “a direct agreement”, but it is available only for the so-called &quot;concession projects of special importance&quot; (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').</td>
<td>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 (see section 21 of article 1 of the 'PPP Law').</td>
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18 The criteria to be recognised as a “concession project of special importance” is stipulated in Schedule 8 of the Order 157 and provides, among others, a requirement to have a total value of estimated construction or reconstruction of the concession facility of not less than 4 million monthly calculated indexes (equivalent of about 26 million USD as the monthly calculated index in 2019 is equal to 2,525 Tenge.).

19 As a general rule, parties under Kazakh law 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 The criteria to be recognised as a PPP project of special importance is stipulated in Schedule 4 of the Order 725 and provides, among others, a 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 26 million USD in the year of 2019).
FAQs ON SETTING UP AND DOING BUSINESS IN KAZAKHSTAN

1. How is the business activity performed in Kazakhstan by foreign investors?
Foreign legal entities may do their business in Kazakhstan by either registering a branch/representative office in Kazakhstan or founding a Kazakhstani company. A branch/representative office is a structural subdivision of a foreign legal entity located in Kazakhstan and is not a legal entity.

2. What is the most popular business type for a legal entity in Kazakhstan?
The most popular type of business in Kazakhstan is Limited Liability Partnership (LLP). For activities such as banking, insurance, and other activities related to 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?
Currently, some certain types of activities in the following areas are subject to licensing: 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 the notification of the relevant state authorities on the start or termination of these activities.
Activities that are subject to licencing/permission or State Authorities’ preliminary notification may only be performed after the relevant licence/permission has

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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.

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).
been obtained or a state authority has been notified. Transactions committed without the relevant licences or permits are null and void, i.e. are invalid whether or not they were declared as such by the court. Activities performed without the relevant licence 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. The 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. The 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 the stability of the tax regime applied to investment activities.

Depending on the type of investment project being implemented, the set of tax incentives and the 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?**

The trademark is registered at the discretion of the applicant or the right holder. Timely registration of a trademark allows you to protect the business from unfair competition, since in case of entering the market with goods or services with an unregistered trademark, any competing legal entity or an individual may register your trademark for own name and use it for own purposes. 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 national registration of a trademark takes nine-twelve months. During this time, a qualification examination of the filed trademark to meet the requirements of legislation, including the search for identical and similar trademarks registered in Kazakhstan is undertaken. The validity term of a trademark is ten 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 the labour activity in Kazakhstan, foreign citizens have to obtain the work permit. After submitting the necessary documents, it takes about 2-2.5 months to obtain the work permit. The work permit is not required for:

1) the directors of branches or representative offices of foreign legal entities;
2) the directors of organisations that concluded with the Government of the Republic of Kazakhstan investment contracts to exercise a priority right in architectural, town-planning and construction activities;
3) the individuals, who arrived for independent employment on professions that are in demand in the priority sectors (economic activities); and
4) the individuals 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 the work permit for a foreign employee is the responsibility of employers rather than foreign employees (except for persons arrived for independent employment on professions that are in demand in the
priority sectors (economic activities). When obtaining the 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. 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 the provided funds exceeds 500,000 USD in equivalent and the period during which the funds are provided is more than 180 days, the transaction must be registered with the National Bank of the Republic of Kazakhstan.

8. **Are there any free economic zones in Kazakhstan?**
Yes, there are 11 special economic zones (SEZ) in Kazakhstan:
- 'Astana, The New City' in Astana;
- 'Astana-Technopolis' in Astana;
- '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.

These zones are exempted from income tax, land tax, land use fee, and property tax. In addition, the sale of certain goods in the SEZ territory which are used for a 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 for 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 a land?**
In Kazakhstan, the land plots can be owned by individuals and legal entities under the right of private ownership or land use. However, there are several restrictions for foreign citizens, stateless persons, foreign legal entities, as well as Kazakhstani legal entities, where the share of foreigners, stateless persons, and foreign legal entities is more than fifty per cent.

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

Moreover, until 31 December 2021, the state-owned land plots of agricultural purposes cannot be even rented to the above-mentioned categories of persons, as well as to Kazakh legal entities, where the share of foreigners, stateless persons, and foreign legal entities is more than fifty per cent.

Since 1 January 2022, the 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 per cent, for temporary land use on lease terms for a period of up to twenty-five years.

Now the Parliament of the Republic of Kazakhstan is considering a draft law that provides for significant changes in relations to the land use and ownership. For instance, the draft law provides for a ban on the provision of land plots located in the border zone and the border strip of the State Border of the Republic of Kazakhstan 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 in the private ownership and land
use (currently the ban applies only to foreigners, stateless persons and foreign legal entities). However, it is still unknown in what version the law will be adopted.

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 a participatory interest in a Kazakhstani company or companies that directly or indirectly control Kazakhstani companies, as well as for other transactions. The approval of the anti-monopoly authority is required, when the amount of the assets of a purchaser or a group of purchasers (as defined in the Kazakhstani Entrepreneurial Code) and a target company, or the total amount of their sales for the last fiscal year exceeds the limit of 10 million MCI.

11. How are disputes settled in Kazakhstan?
There are several ways to settle disputes. Before applying to the court, it is necessary to try to settle a dispute in a pre-trial procedure; this 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.). The pre-trial procedure can be implemented through negotiations, including sending a formal claim to the counterparty. If the parties fail 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 the 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 for 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 Kazakhstani courts covers:
1) the cases associated with the right to immovable property, which is located in Kazakhstan;
2) the cases associated with the statement of claims against carriers, which have arisen from transportation agreements, if the carriers are located in Kazakhstan;
3) the divorce cases between Kazakhstani and foreign citizens or stateless persons, if both spouses are residing in Kazakhstan;
4) the cases of special action proceedings of the Civil Procedural Code of the Republic of Kazakhstan (the protection of electoral rights of citizens and public associations, the appeal against the decisions of state authorities, the legality of the legislation, etc.);
5) the investment disputes are considered by the court of Astana if they do not contradict the international treaties ratified by the Republic of Kazakhstan. The 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 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 had 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 the payment of the state fee amounting to 30 USD, 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 to refuse the 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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