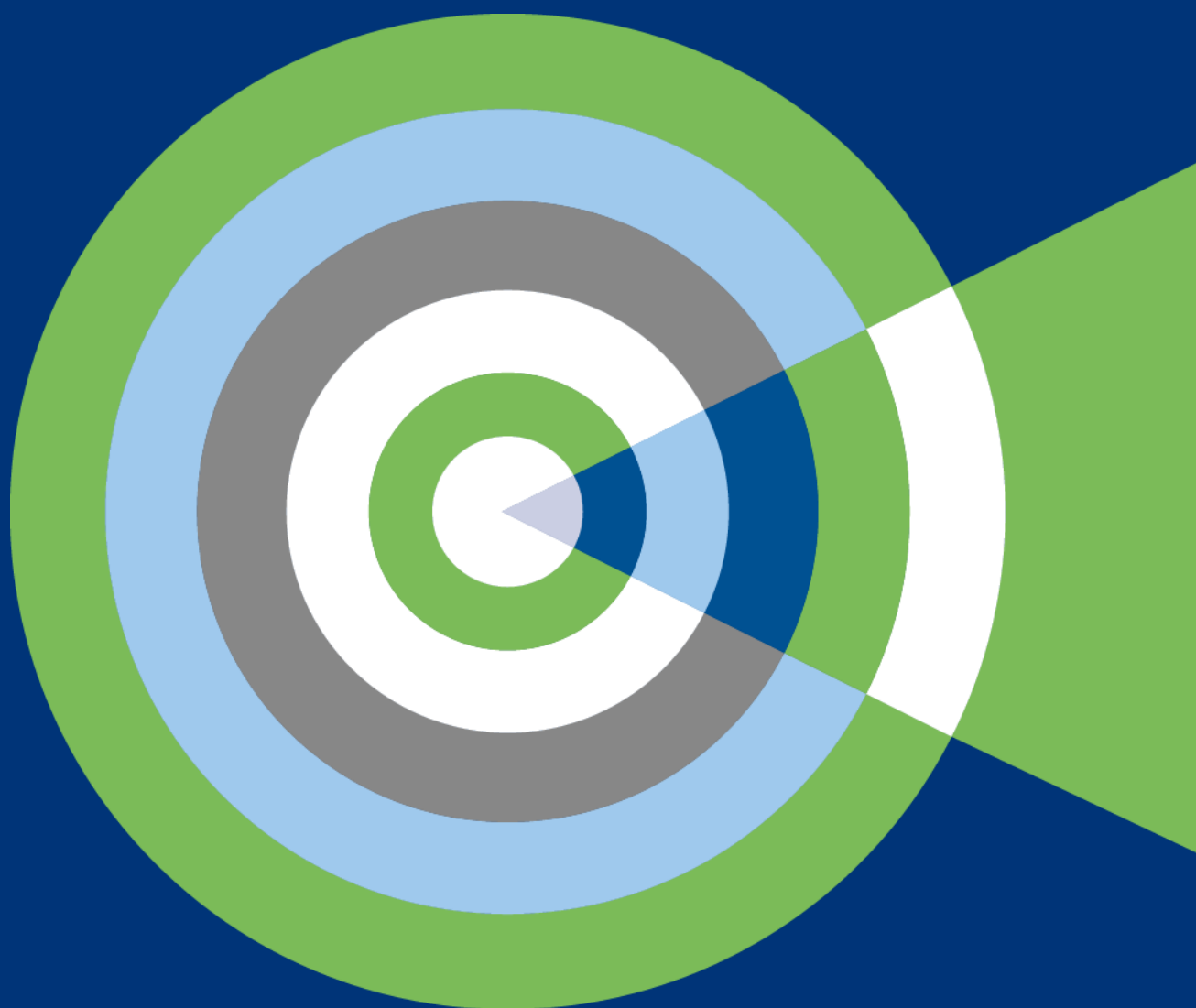


# DOING BUSINESS

IN KAZAKHSTAN



The network  
for doing  
business

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# 1 – INTRODUCTION

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UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in around 90 countries throughout the world.

Business partners work together through the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Kazakhstan has been provided by the office of UHY representatives:

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A detailed firm profile for UHY's representation in Kazakhstan can be found in section 8.

Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at March 2018.

We look forward to helping you do business in Kazakhstan.

## 2 – BUSINESS ENVIRONMENT

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Kazakhstan is located in the centre of the Eurasian continent. Its territory is 2,724,900 square kilometres and accordingly the country is the ninth largest in the world by size.

In the north and west, the republic has common borders with Russia (at 7 591km, the longest continuous overland border in the world), in the east with China (1 783km), and in the south with Kyrgyzstan (1 242km), Uzbekistan (2 351km) and Turkmenistan (426km). The total length of the overland borders is 13,200km. Kazakhstan is the largest country in the world with no direct access to the open ocean.

The country has two inland seas – the Caspian and the Aral. The north-eastern part of the Caspian's water area is situated within the country's territory, while the Aral Sea is shared between Kazakhstan and Uzbekistan. In addition, there are 48,000 lakes (including the Balkhash, Zaisan and Alakol) and around 8,500 rivers.

A large part of the country's territory consists of desert (44%) and semi-desert (14%), with steppes covering 26% of Kazakhstan's territory and forests 5.5 %.

Due to its remoteness from the oceans, the country has an extreme continental climate. The average temperature in January is around -19 °C in the north and -2 °C in the south, the average temperature in July is around +19 °C in the north and +28 °C in the south. Summer is hot and dry; winter is cold and snowy.

The Republic of Kazakhstan is an industrial country with mining operations being one of the main sources of its economic growth. The country's mineral raw material base consists of more than 5 000 deposits with an estimated expected value of tens of trillions of US dollars. The country holds first place in the world for the exploration of reserves of zinc, tungsten and barite, second place for silver, lead and chromites, third place for copper and fluorite, fourth for molybdenum and sixth place for gold.

Kazakhstan also has considerable reserves of oil and gas, which are concentrated in its western areas. Today, the country belongs to the group of the world's leading oil-producing states with volumes amounting to more than 80 million tons of oil and gas condensate a year. According to plans, annual extraction will increase to 120 million tons by 2020. At present Kazakhstan is in ninth place in the world with regards to confirmed reserves of oil. In addition, the country is in eighth place for reserves of coal and second place for reserves of uranium.

Traditionally, much attention has been paid to the development of the agricultural sector. Kazakhstan is among the world's top ten grain exporters and is one of the leaders in the export of flour. Farming is well-developed in the north, with 70 % of arable lands used for growing grain crops such as wheat, barley and millet. In the south of the country, rice, cotton and tobacco are grown. Kazakhstan is also known for its gardens, vineyards and gourd plantations. Animal husbandry is another leading branch of agriculture. The key areas of animal husbandry are sheep, horse, camel, cattle and pig breeding. Poultry farming and fishery are also developed in the country.

Kazakhstan declared itself an independent country on 16 December 1991, the last Soviet republic to do so. Its communist-era leader, Nursultan Nazarbayev, became the country's new president. Since independence, Kazakhstan has pursued a balanced foreign policy and worked to develop its economy, especially its hydrocarbon industry.

Whilst the country's economic outlook is improving, President Nazarbayev maintains strict control over the country's politics. Nevertheless, Kazakhstan's international prestige is building. It is now considered to be the dominant state in central Asia. The country belongs to many international organisations, including the United Nations, NATO's Partnership for Peace, the Commonwealth of Independent States and the Shanghai Cooperation Organisation. In 2010, Kazakhstan chaired the Organisation for Security and Cooperation in Europe (OSCE). In 2012, a Customs Union with Russia and Belarus was formed.

## **MAJOR EVENTS**

### **KAZAKHSTAN HELD OSCE SUMMIT WITH GREAT SUCCESS**

The OSCE summit in Astana was held on 1–2 December 2010. Kazakhstan chaired the Forum for Security Cooperation of the OSCE, which includes the work of arms control and conflict prevention in the OSCE countries.

### **ASIAN WINTER GAMES SECOND BIGGEST SPORT EVENT AFTER OLYMPIC GAMES**

The seventh Asian Winter Games 2011 (AWG 2011) took place in January 2011 in Kazakhstan. 600 athletes from 32 countries contested five sports and 11 disciplines.

### **CONGRESS OF WORLD RELIGIONS 2012**

At present, representatives of more than 140 ethnic and 40 confessional groups live peacefully in Kazakhstan. In view of the increased role of religion in society, the president of Kazakhstan, Nursultan Nazarbayev, put forward the initiative of holding a forum of world and traditional religions in the capital of the Republic of Kazakhstan, the city of Astana. The idea of the head of state was that a dialogue based on confidence and mutual understanding between leaders of the world and traditional religions will open prospects for international cooperation and contribute to overcoming pressing problems of our time such as violence, extremism and terrorism.

### **EXPO 2017**

On 22 November 2012, Astana was chosen by the International Exhibitions Bureau (BIE) as the venue to host EXPO 2017, which will focus on the theme 'Future Energy'. The theme encompasses both the future of energy and also innovative, but practical energy solutions and their global impact. EXPO 2017 will be the first time that a major international exhibition of this kind will be held in a country from the former Soviet Union. More than 100 countries and ten international organisations are expected to participate. Around 2–3 million people are expected to visit the international pavilions from June to September 2017.

## PEOPLE

Kazakhstan is ethnically and culturally diverse, in part due to mass deportations of many ethnic groups to the country during Stalin's rule.

Kazakhstan allows freedom of religion and many different beliefs are represented in the country. Islam is the primary religion, followed by Orthodox Christianity.

The population of Kazakhstan *for 2018 is 18.18 million people*. Kazakhs are the largest group, followed by Russians. According to the national census the ethnic structure of Kazakh society (in 2009) was as follows:

- Kazakhs – 63.07 %
- Russians – 23.70 %
- Uzbeks – 2.85 %
- Ukrainians – 2.08 %
- Uygurs – 1.40 %
- Tatars – 1.28 %
- Germans – 1.11 %
- Others – 4.51 %.

The official state language is Kazakh, though Russian is still commonly used for everyday communication.

The capital is the city of Astana.

## POLITICS

Early presidential elections were held in Kazakhstan on 3 April 2011, having been scheduled originally for 2012.

The Republic of Kazakhstan is a unitary state with a presidential form of government. According to the constitution, the state proclaims itself a democratic, secular, legal and social state whose highest values are the individual, their life, rights and freedoms. The government implements the executive power of the Republic of Kazakhstan, heads the system of executive bodies and exercises supervision of their activity.

The 2011 elections were called after a plan for holding a referendum to increase presidential term limits to 2020 was rejected by the Constitutional Council.

Mr Nazarbayev was re-elected for a third term with 95% of the votes and a 90% turnout, with three other nominal candidates. The president of the Republic of Kazakhstan is the head of state, its highest official, who determines the main directions of domestic and foreign policy of the state and represents Kazakhstan within the country and in international relations. The president is the symbol and guarantor of the unity of the people and the state power, inviolability of the constitution, rights and freedoms of an individual and citizen.

President Nazarbayev expanded his presidential powers by decree; this means only he can initiate constitutional amendments, appoint and dismiss the government, dissolve parliament, call referendums at his discretion and appoint administrative heads of regions and cities.

Early presidential elections were held in Kazakhstan on 26 April 2015, having been originally scheduled for 2016. The result was a victory for long-term incumbent President Nursultan Nazarbayev of Nur Otan, who received 97.7% of the vote, winning a fifth term in office. President Nursultan Nazarbayev appointed Karim Kazhimkanovich Massimov as Prime Minister of the Republic of Kazakhstan and relieved him of the post as Head of the Administration of the President of the Republic of Kazakhstan.

Legislative functions are performed by the parliament of the Republic of Kazakhstan, which consists of two chambers acting on a permanent basis – the Senate and the *Majilis*.

The Senate is composed of deputies represented in an order, established by the constitutional law, of two persons from each *oblast*, major city and the capital of the Republic of Kazakhstan. Fifteen deputies of the Senate are appointed by the president of the Republic taking into account the necessity for maintaining representation in the Senate of national, cultural and other significant interests of society. The *Majilis* consists of 107 deputies elected in an order, established by the constitutional law. Nine deputies of the *Majilis* are elected by the Assembly of the people of Kazakhstan. The term of Senate deputies is six years; the term of *Majilis* deputies is five years. Currently three parties are presented in the *Majilis* – the ‘Nur Otan’ People's Democratic Party, the ‘Ak zhol’ Democratic Party of Kazakhstan and the Communist People’s Party of Kazakhstan.

By its administrative and territorial structure, the country is divided into 14 regions and two major cities of the republic:

- Astana – the capital of Kazakhstan
- Almaty – a second major city
- Akmola region
- Aktobe region
- Almaty region
- Atyrau region
- East Kazakhstan region
- Zhambyl region
- West Kazakhstan region
- Karagandy region
- Kostanay region
- Kyzylorda region
- Mangystau region
- Pavlodar region
- North Kazakhstan region
- South Kazakhstan region.

## ECONOMY

### POPULATION INCOME

The monetary unit of the country is the tenge (KZT).

*Kazakhstan’s Average Monthly Nominal Income: per Capita: Annual data was reported at 75,025.00 KZT in Dec 2016. This records an increase from the previous number of 67,112.00 KZT for Dec 2015. Kazakhstan’s Average Monthly Nominal Income: per Capita: Annual data is updated yearly, averaging 32,984.00 KZT from Dec 2000 to 2016, with 17 observations. The data reached an all-time high of 75,025.00 KZT in 2016 and a record low of 6,352.00 KZT in 2000. Kazakhstan’s Average Monthly Nominal Income: per Capita: Annual data remains active status in CEIC and is reported by The Agency of Statistics of the Republic of Kazakhstan.*

### REAL SECTOR OF ECONOMY

*The International Monetary Fund forecasts that Kazakhstan's 2016 real GDP growth will stand at 3%, accelerating to 4% in 2017, according to the Fund's Bulletin on economic prospects of Caucasus and Central Asia.*

### INDUSTRIAL PRODUCTION

Industrial production in Kazakhstan is reported by the Agency of Statistics and measures the output of businesses integrated in the industrial sector of the economy such as manufacturing, mining and utilities.

*Industrial production in Kazakhstan increased 6.1 percent year-on-year in February of 2018, following a 5.2 percent rise in the previous month. Mining output advanced further (6.5 percent from a 4.5 percent gain in January) and production of water supply fell at softer pace (-2.2 percent compared to -3.3 percent). On the other hand, output slowed for manufacturing (6.0 percent compared to 6.2 percent) and electricity, gas, steam & air conditioning supply (5.0 percent compared to 6.4 percent). On a monthly basis, industrial production rose 2.5 percent, after a 14.7 percent drop in the prior month. Industrial Production in Kazakhstan averaged 5.29 percent from 1999 until 2018, reaching an all-time high of 23.30 percent in June of 2001 and a record low of -7.80 percent in April of 1999.*

Since the beginning of 2015 the industrial production in North Kazakhstan region has amounted to 14 billion tenge. The production is carried out by 75 large and medium-sized enterprises of the region, the Department of Statistics of the region informed.

According to the information, more than 58% of total industrial production is produced by the enterprises with number of employees more than 50 people.

Such activities as the production, transmission and distribution of electricity (33.1%), food production (32.3), machinery (14.3), steam and air conditioning supply (11.1 %) are dominated in the structure of industrial output.

According to the statistical monitoring, 18 companies are involved in food production, engineering products - 15, the release and distribution of electricity - 14, water - 6 companies.

In food production leading place is occupied by dairy products (45.4%), bread and flour products (22.9%), vegetable oils (14.4%) and milling industry products (12.6%). In January-February of this year, large and medium-sized enterprises have increased production of biscuits and confectionery products by 83.3%, 22.4% - flour, milk - by 4.1%.

### COMPANIES

As of April 1, 2015 the number of registered legal entities in North-Kazakhstan region has amounted to 9377 units, the Department of Statistics of the region informed.

96.7% of registered enterprises are accounted for by small enterprises (employing up to 100 people), 2.6% - medium-sized enterprises (from 101-250 people) and 0.7% - large enterprises (over 250 people). 7158 (76.3%) legal entities have private ownership, the state - 1782 (19%), foreign - 437 (4.7%). 5831 (62.2%) legal entities are functional, active - 4811 (51.3%), temporarily inactive - 724 (7.7%), not yet active (new) - 296 (3.2%), in the process of liquidation - 71 (0.8%).

Business partnerships - 6322 (67.4%); Institutions - 1529 (16.3%); consumer cooperatives - 615 (6.5%); associations - 317 (3.4%); state-owned enterprises - 311 (3.3%).



The most intensive processes of creating legal entities in the sectors: wholesale and retail trade, repair of motor vehicles and motorcycles; agriculture, forestry and fisheries; construction; industry.

## FOREIGN TRADE

*In January 2018, Kazakhstan's foreign trade turnover amounted to USD 6.55 billion, which is 24.8% higher than in the same month last year, Kazinform cites the Statistics Committee of the Kazakh Ministry of National Economy. Related news Asian stock markets fall sharply amid fears of U.S.-China trade war In the accounting period, the exports from Kazakhstan totaled \$4.07 billion (25 pct more than in January last year), whereas the imports reached nearly \$2.48 billion.*

The country's main imports are:

- Electronics, machinery and mechanical appliances (25% of total imports)
- Mineral products (15%)
- Transport equipment (12%)
- Base metals and related products (10%).

Kazakhstan's main trading partners are:

- China (19% of total exports and 14% of imports)
- Russia (8% of exports and 41% of imports).
- Others key partners include Italy, the Netherlands and Ukraine.

## PRICES

*Producer Prices in Kazakhstan increased to 1041.69 Index Points in February from 1022.84 Index Points in January of 2018. Producer Prices in Kazakhstan averaged 500.53 Index Points from 1998 until 2018, reaching an all-time high of 1041.69 Index Points in February of 2018 and a record low of 122.10 Index Points in March of 1999.*

## FINANCE

*Kazakhstan recorded a government budget deficit of 59248.80 KZT Million in February of 2018. Government Budget Value in Kazakhstan averaged -243414.99 KZT Million from 2005 until 2018, reaching an all time high of 311592.20 KZT Million in December of 2006 and a record low of -1356975.10 KZT Million in December of 2017.*

*Taking into account the projected revenues and the planned deficit, the forecast of expenditures of the republican budget was determined in 2018 in the amount of 9.2 trillion tenge, in 2019 - 9.7 trillion tenge, in 2020 - 10.2 trillion tenge.*

*Taking into account the projected revenues to the National Fund at an oil price of \$45 per barrel and a decrease in the guaranteed transfer, the total amount of the National Fund's resources in 2020 is projected to be 62.4 billion US dollars (32.5% of GDP),*

## 3 – FOREIGN INVESTMENT

### TREATIES

Kazakhstan has concluded bilateral treaties for the encouragement and mutual protection of investments with 41 countries.

Kazakhstan is also a party to a number of multilateral treaties concerning foreign investments (for example, the Energy Charter).

Investment treaties provide for a number of guarantees to nationals of member countries, including most-favoured-nation treatment, protection against discrimination, requisition and nationalisation and the right to resolution of investment disputes by international arbitration in the absence of an arbitration agreement.

TABLE 1

*Countries where bilateral treaties on the promotion and mutual protection of investments exist*

1 Armenia	12 Greece	23 Lithuania	34 Sweden
2 Azerbaijan	13 Hungary	24 Malaysia	35 Switzerland
3 Belgium- Luxembourg Economic Union	14 India	25 Mongolia	36 Tajikistan
4 Bulgaria	15 Iran	26 Netherlands	37 Turkey
5 China	16 Israel	27 Pakistan	38 Ukraine
6 Czech Republic	17 Italy	28 Poland	39 United Kingdom
7 Egypt	18 Jordan	29 Qatar	40 USA
8 Finland	19 Republic of Korea	30 Romania	41 Uzbekistan
9 France	20 Kuwait	31 Russia	
10 Georgia	21 Kyrgyzstan	32 Slovakia	
11 Germany	22 Latvia	33 Spain	

### CODE OF ETHICS FOR FOREIGN INVESTORS

On 8 December 2000, President Nazarbayev approved a Code of Ethics which all investors are required to follow.

This code is believed to be the first of its kind anywhere in the world.

It was drafted by the Foreign Investors Council, which was chaired by the President of the Republic of Kazakhstan and it covers 13 subjects, including the following:

- Observance of Kazakhstani legislation
- Prohibition of illegal or improper payments
- Observance of state policies and objectives (including protection of the environment), creation of employment opportunities and the transfer of technology
- Abstention from illegal involvement in political activities
- Recognition of the importance of the country's import-substitution and export-oriented policies
- Objectivity in public assessments of the country in the media.

## FOREIGN INVESTMENT

Kazakhstan has taken a leading position among CIS countries over recent years for the volume of direct foreign investment per capita.

*The Kazakh government approved Aug. 15 a national investment strategy for 2018-2022 which seeks to increase foreign investments 26 percent in five years and create a more favourable investment climate. Twenty-seven countries were identified as the most important for attracting investments.*

*Investment strategy was developed with the participation of Kazakh President Nursultan Nazarbayev and the World Bank experts. The government hopes the increased investment will facilitate increased exports.*

*Today, products made in Kazakhstan are exported to 117 countries. Last year, Kazakhstan ranked 52nd among 204 countries with a share of 0.23 percent of global exports. Mainly, the state exports raw materials. But, in the past 10 years, exports of services have almost doubled, reaching \$6.3 billion in 2016.*

The accepted legislation acts and organisational procedures have strengthened the investment attraction of the country and, accordingly, promoted inflow of foreign investments to the Kazakhstan economy. As the result, Kazakhstan has been the leader among the CIS countries for direct foreign investments per capita over several years and received the international rating of an investment class first among the CIS countries.

## FOREIGN DIRECT INVESTMENTS LEGISLATION

The procedure of attraction and protection of foreign capital is now regulated by more than 20 legislative and standard legal acts.

According to this legislation, foreign investments in Kazakhstan can be made for any objector kind of activity in all resolved organisational-legal forms, including by the creation of companies which completely belong to foreign investors, their branches and representations, or joint ventures in which they have a property part. It is guaranteed for foreign investors to use at their own discretion incomes received from their activity, for reinvestments in the Republic, the acquisition of goods or for other purposes.

The Law of the Republic of Kazakhstan about investments (formed on the basis of two previous laws) was adopted on 8 January 2003. This law regulates 'equality of stimulation measures of investments', both for foreign and domestic investors, guarantees the protection of investor rights and orders the resolution of disputes with the participation of investors.

The government approved a new list of priority investments and kinds of activity in September 2005. Today there are 237 priority areas specified in agriculture, chemical production, the iron and steel industry, cars and equipment manufacturing, power generation, transport, construction materials and other sectors. The revision of the list (which first came into effect from 2003) was initiated because of the creation of clusters for several sectors. For example, from the formation of a transport-logistical services cluster, activities such as the operation of transport terminals (ports, stations, landing stages and moorings) and warehousing and cargo loading (logistical centres and warehouses) were added to the list. And since more hotels were considered necessary for the development of the tourism cluster, hotels were included in the list.

International advisers recognised the conformity of the Kazakhstan investment legislation to the norms of the World Trade Organization TRIMs (Agreement on Trade Related Investment Measures) in 2005. In addition, guarantees over investments are regulated by inter-governmental agreements on the encouragement and protection of investments. Kazakhstan has signed these agreements with 42 countries of the world.

Certain investment preferences are given to foreign investors on the same level as those given to local investors, including corporate income tax (CIN or profit tax) within 10 years (for created enterprises except for tax, for operating enterprises - the right to deduct costs of the fixed assets obtained within the realisation of the investment project) and property tax or ground tax within five years. Foreign companies are exempted from customs duties on imported equipment intended for the realisation of investment projects and also on accessories.

Companies with foreign-authorized capital can apply for state grants on ground areas, buildings and construction, cars and equipment, vehicles and other items.

All listed privileges are given on condition that the investor fulfils the following requirements:

- Invests in the priority sectors of the Kazakhstan economy
- Invests in fixed activities of enterprises which are legal entities under the legislation of Kazakhstan, for the creation of new facilities, expansion and the updating of operating facilities with modern technologies
- Gives to corresponding state authorities the documents confirming the presence of the financial, technical and organisational resources necessary for the realisation of the declared investment project.

Investment privileges are given by the Committee on Investments of the Ministry of Industry and Trade of Kazakhstan (the authorised state body) on the basis of the investment agreement.

It is necessary to note that another tax mode is provided for investors in the oil and gas sector and companies must submit to laws about the subsoil and use of the subsoil, and also to the agreement on production division (APD).

Requirements on contracts concerned with granting investment preferences are as follows:

- Investment offers should correspond to the list of prior kinds of activity
- Investment is only put into fixed assets, not working capital.

It is necessary to specify in the application to the Committee on Investments:

- An enterprise description
- The sum of the authorised capital
- A short description of the project.

In addition, it is necessary to submit the business plan and to confirm the availability of the necessary financial resources. If an individual plans to realise a project at the expense of his/her own means, he/she should present an accounting balance of the enterprise. In the case of financing a project by borrowing costs, the initiator should give a copy of the credit contract together with the application. It is necessary to give a copy of estimates if the project is for construction and installation works.

From 1 January 2004, tax codes have provided certain tax privileges for enterprises carrying out activities within the territory of special economic zones. Currently there are three special economic zones:

- Astana – a new city
- Park of Information Technologies
- Seaport Aktau.

Privileges include reduction of corporate income tax paid in the budget by 50% or 100 %, depending on the special economic zone, and also exemption from the ground tax and property tax.

## FOREIGN DIRECT INVESTMENT ANALYSIS

*Foreign Direct Investment in Kazakhstan increased by 5164.60 USD Million in the third quarter of 2017. Foreign Direct Investment in Kazakhstan averaged 4179.94 USD Million from 2001 until 2017, reaching an all time high of 8206.11 USD Million in the first quarter of 2012 and a record low of 864.32 USD Million in the first quarter of 2002.*

Since gaining its independence, Kazakhstan has adopted a series of reforms to liberalise its economy and facilitate foreign investment. The decade of 1999-2009 witnessed FDI multiplying ten times, increasing from USD 1.852 billion to USD 18.429 billion. This had a dynamic effect on the production of oil and gas.

Although Kazakhstan prefers national investors at the expense of foreign ones, FDI continue to flow in and even increased in 2014, despite an overall decrease in FDI in the region. The main investors are the Netherlands, the USA, France, Great Britain and China.

The oil and mining sectors are still the most attractive since they concentrate more than half of the FDI. During the last decade, the country, known as the "locomotive" of post-Soviet Central Asia has tripled its oil production and become the world's second largest exporter of crude oil, after Russia.

	Kazakhstan	Eastern Europe & Central Asia	United States	Germany
<b>Index of Transaction Transparency*</b>	9.0	7.0	7.0	5.0
<b>Index of Manager's Responsibility**</b>	6.0	5.0	9.0	5.0
<b>Index of Shareholders' Power***</b>	6.0	9.0	5.0	
<b>Index of Investor Protection****</b>	8.0	5.9	8.3	5.0

Foreign Direct Investment	2011	2012	2013
<b>FDI Inward Flow (million USD)</b>	13,760	13,785	9,739

Foreign Direct Investment	2011	2012	2013
<b>FDI Stock</b> ( <i>million USD</i> )	112,458	125,672	129,554
<b>Performance Index*</b> , Ranking on 181 Economies	7	-	-
<b>Potential Index**</b> , Ranking on 177 Economies	33	-	-
<b>Number of Greenfield Investments***</b>	50	28	29
<b>FDI Inwards</b> ( <i>in % of GFCF****</i> )	35.0	32.6	21.2
<b>FDI Stock</b> ( <i>in % of GDP</i> )	59.8	62.0	58.8

#### EXCHANGE CONTROL

The basic principles of exchange transactions performed in Kazakhstan are regulated by Kazakhstan's Law on exchange regulation and control.

The basic principles are as set out below.

Exchange transactions between residents are unlawful, with the exception of transactions defined in the list, for example:

- Fees paid to banks for performing exchange transactions and fines (penalties) paid on contracts on bank services in a foreign currency
- Transactions associated with the acquisition, sale and payment of premiums on redemption of securities denominated in a foreign currency
- Purchase and sale of fine gold bars
- Payment and remission of cash under commission contracts in relation to exports and imports using transferable letters of credit as the mode of payment
- Transactions associated with the payment of taxes and other compulsory items under Kazakhstan law.

Residents may enter into transactions with non-residents in the national or a foreign currency as agreed between them in accordance with the exchange regulations of Kazakhstan.

Residents may issue promissory notes in a foreign currency on transactions with non-residents.

Non-residents may, without any restrictions, receive and remit dividends, commission fees and other income on deposits, securities, loan and other exchange transactions entered into with residents and performed in accordance with this Law.

Exchange transactions between non-residents are allowed without any restrictions provided they meet set requirements. In particular, payments and remissions on exchange transactions between residents and non-residents must be made through accounts with authorised banks with some exceptions.

Any foreign cash received by resident and non-resident legal entities from transactions performed in Kazakhstan must be credited to an account with an authorised bank.

Residents and non-residents may buy and sell foreign currency with banks authorised to conduct exchange transactions and other authorised organisations in accordance with the procedures set down by the National Bank of Kazakhstan.

Capital flow transactions and opening of accounts are subject to notification or registration requirements.

Payments between residents and non-residents on commercial loans associated with the export or import of goods for a time period exceeding 180 days must be registered.

Payments between residents and non-residents in settlement of exported and imported services must also be registered. The notification is to be made by the authorised bank servicing such payments.

These exchange requirements do not apply to commercial loans associated with export and import transactions where transaction certificates have been drawn up.

Direct investments by non-residents and by residents outside Kazakhstan are subject to registration. Direct investment is defined as investment of cash, securities, property, property rights including intellectual property rights and other property as payment for shares of a legal entity if the person investing owns or will own as a result of such investment, 10% or more of the voting shares (10% or more votes of the total number of shareholder votes) of such a legal entity.

Residents are required to notify the National Bank of Kazakhstan of any exchange transactions associated with the acquisition of securities, investments in share capital and exchange transactions involving derivative financial instruments.

Financial loans made by residents to non-residents and by non-residents to residents for a time period exceeding 180 days are subject to registration.

Other capital flow transactions include:

- 1) Acquisition of property rights for real estate with the exception of movable property
- 2) Acquisition of exclusive intellectual property rights
- 3) Assignment of cash and other property for trust management or to fulfil obligations under a joint venture.

Payments made by residents to non-residents (and vice versa) in connection with acquiring real estate and intellectual property rights, as well as through the assignment of cash and other property for trust management, are also subject to the notification requirement.

The National Bank of Kazakhstan registers exchange transactions to be registered if the following requirements are met:

- 1) The value of the assets acquired or liabilities incurred by a resident of Kazakhstan from or to a non-resident exceeds an equivalent of USD 500,000
- 2) The value of assets transferred from Kazakhstan to a non-resident exceeds an equivalent of USD 100,000

- 3) The amount of payment or bank transfer by a resident to a non-resident (or vice versa) on transactions in financial derivative instruments or in connection with settlements on export or import services exceed an equivalent of USD 100,000.



## 4 – SETTING UP A BUSINESS

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### BUSINESSES IN KAZAKHSTAN

Private business in the Republic of Kazakhstan is carried out through various kinds of commercial organisations.

All businesses should be registered with the territorial authorities of the Ministry of Justice and receive the corresponding certificates on state registration.

### REGISTRATION

- 1) The legal entity is subject to state registration with the justice authorities, except for cases provided for by acts of the Republic of Kazakhstan. The order of state registration is defined by legislation
- 2) Data submitted for state registration of commercial organisations, including the company name, joins with the uniform state register of legal entities
- 3) The legal entity is considered to have been created from the moment of its state registration
- 4) Branches and representations are registered in the order established by the acts. Branches and representations are subject to a re-registration in cases of a name change
- 5) Infringement of the order of formation of the legal entity established by the law or discrepancies within the constituent documents will lead to the refusal of state registration for the legal entity. Refusal or evasion of registration can be appealed in court
- 6) The legal entity is subject to a re-registration in cases where there has been:
  - a) A reduction of the authorised capital size
  - b) A name change
  - c) A changing in the structure of the participants in an economic association (except where the register of participants in the economic association is carried out by the professional participant of a securities market, who has a licence for realisation activity on the conducting of a system of registers of holders of securities).

Any changes brought into the constituent documents on specified parts, without a re-registration of the legal person, are void.

In the case of entering other changes and additions into constituent documents, the legal entity should inform its registering authority within a month.

### ESTABLISHMENT OF A LIMITED LIABILITY COMPANY

The most popular legal form of enterprise in Kazakhstan for foreign investors is the limited liability company (LLC).

The minimum required authorised capital of the LLC is 100 minimum calculation index (approximately USD 800). Contributions to the LLC authorised capital may be brought both in monetary and natural form. In cases where the cost of contributions in the natural form exceeds a 20,000 minimum calculation index (approximately USD 160 000), estimation of the cost should be confirmed by the independent expert.

Any foreign company who does not wish to form a legal entity in Kazakhstan can open a representation or branch in the Republic's territory. Representations are not independent legal entities; they can be created for the gathering of information and establishment of business contacts, but should not be engaged in any enterprise activity. Therefore "commercial" representations need to be re-registered in branches which are divisions of foreign legal entities and can carry out enterprise activity under Kazakh laws.

The following documents need to be submitted to the justice authority for registration of a legal entity (the full list is not limited to the listed documents below):

- The statement of state registration
- The charter of the legal entity
- The document confirming the decision on formation of the legal entity by the founders (for example, a protocol of the founders session)
- An extract from the trading register, confirming the legal status of the foreign investor (for example the certificate on establishment)
- The letter or reference on the absence of debts of the founders before the state budget, given out by tax authorities of Kazakhstan
- A copy of the passport of the director of the created legal entity
- The certificate of registration of the tax bearer, given out to the director of the created legal entity
- A copy of the contract of rent or other document confirming the presence of the company at premises taken for the realisation of the declared activity
- The power of attorney which has been given out by the company-founder to the person authorised to register the legal entity on behalf of its name
- The receipt on payment for the gathering of the state registration.

The procedure for registration of representations or branches of foreign legal entities is similar to registration of Kazakhstan legal entities. The basic difference is the list of the documents submitted to the justice authority.

They include:

- The statement of state registration of the representation (branch)
- Provisions about the representation (branch) confirmed by the foreign legal entity
- The founders' session protocol (the decision of the founders) on the formation of a representation (branch) in Kazakhstan
- A copy of the charter or constituent documents of the foreign legal entity registering representation (branch)
- An extract from the trading register confirming legal status of the foreign investor (for example the certificate of establishment)
- The power of attorney which has been given out to the head of the representation (branch)
- A copy of the passport of the head of the representation (branch)
- The certificate of registration of the tax bearer, given out to the head of the representation (branch)
- The power of attorney which has been given out to the person authorised to register the representation (branch) on behalf of the foreign legal entity
- A copy of the contract of rent or other document confirming the legal address of the representation (branch)
- The receipt of payment for the gathering of the state registration.

In both cases, the documents submitted to the justice authorities should be legalised/ apostilled, translated into the Kazakh and Russian languages and assured by a notary public office.

### LIMITED LIABILITY COMPANIES

- 1) An association founded by one or several persons, where capital is divided into shares of sizes defined by constituent documents, is deemed to be a Limited Liability Company; participants of the limited liability company are not responsible under its obligations and only bear risk of losses related to company activity within the cost of their contributions. Exceptions to this rule can be provided in legislative acts
- 2) The participants of the limited liability company who made partial contributions bear a joint liability under its obligations within the cost of the non-contributed part of each of the participants
- 3) The number of participants of the limited liability company is not limited. The limited liability company cannot have other associations consisting of one person as a unique participant. An auditor check of the limited liability company activity should be made on request of any of its participants. Public reporting of the limited liability company is not required, except for cases provided by the legislation or constituent documents
- 4) The limited liability company can be voluntarily reorganised or liquidated under a decision of its participants. Other forms of reorganisation and limited liability company liquidation are defined by legislative acts. The limited liability company has the right to be transformed into another association, joint-stock company or production co-operative
- 5) The legal status of the limited liability company and the right and duty of its participants are defined by legislative acts.

### ASSOCIATIONS WITH ADDITIONAL RESPONSIBILITY

- 1) An association is deemed to be an association with additional responsibility if its participants are responsible under its obligations for contributions to the authorised capital, and in the case of the insufficiency of these sums, they have liabilities which are multiple to the contributions brought by them
- 2) The limiting size for the responsibility of participants is provided in the charter. In the case of bankruptcy of one of participants, his/her responsibility under association obligations is distributed between the other participants in proportion to their contributions, if another order of responsibility distribution is not provided for by the constituent documents
- 3) Rules for limited liability companies are also applied to associations with additional responsibility.

### JOINT-STOCK COMPANY

The authorised capital of a Joint-stock company at the moment of registration should not be less than 50,000 minimum calculation index or less than KZT 43,600,000 in 2011.

- 1) A legal entity issuing shares for the purpose of attracting investment for the realisation of its activity is deemed to be a joint-stock company. Shareholders of joint-stock companies are not liable under its obligations and only bear the risk of losses related to the company activity within the cost of the shares belonging to them, except for cases provided by legislative acts.
- 2) The joint-stock company possesses property separate from the property of the participants, bears responsibility under the obligations within the property and is not liable for obligations of its participants. Shareholders of corporate saving pension funds bear a joint liability under obligations of the named funds and on the conditions established by the legislation about pension supply.
- 3) The joint-stock company can be created by one person or consist of one person in the case of acquisition of all company shares by one shareholder, except for cases provided for by legislative acts.
- 4) The legal status of a joint-stock company and the right and duty of shareholders are defined according to acts. Features of the legal status of joint-stock companies created by privatisation of state enterprises or in which controlling interest belongs to the state, are defined by the Republic of Kazakhstan's legislative acts.

5) Non-commercial organisations can be created in the legal form of a joint-stock company in cases provided for by legislation.

#### PRODUCTION CO-OPERATIVE

The minimum size of a production co-operative's authorised capital is not established by the legislation. It consists of the property payments of members of the co-operative and the size is defined by the members.

- 1) A production co-operative is deemed to be a voluntary association of citizens on the basis of membership for a joint enterprise activity based on their personal labour participation and association by its members of property payments
- 2) Members of a co-operative should be not less than two
- 3) Members of a production co-operative bear under co-operative obligations additional (subsidiary) responsibility and an order provided for by the Law on production co-operatives
- 4) The legal status of a production co-operative and its members is defined according to legislative acts.

#### AFFILIATED ORGANISATION

- 1) An affiliated organisation is a legal entity where the prevailing part of the authorised capital was generated by another legal entity (the basic organisation)
- 2) An affiliated organisation is not liable for debts of the basic organisation. The basic organisation under the contract with the affiliated organisation has the right to give the final obligatory instructions for it, and is liable for the affiliated organisation under the last transactions concluded to execute such instructions. In cases of bankruptcy of the affiliated organisation because of the basic organisation, it bears subsidiary responsibility for its debts
- 3) Participants of an affiliated organisation have the right to demand compensation from the basic organisation for the losses caused by the fault of the affiliated organisation, except for cases provided by legislative acts
- 4) Features of the affiliated organisation provisions, not provided in the present article, are defined by legislative acts.

#### BRANCHES AND REPRESENTATIONS

- 1) A branch is the isolated division of a legal entity located out of a place of its choosing and carrying out all or part of its functions, including representation
- 2) Representation is the isolated division of the legal entity which is located in a place of its choosing, both carrying out protection and representation of interests of the legal entity, making transaction and other legal actions, except for cases provided by acts of Republic Kazakhstan
- 3) Branches and representations are not legal entities. They are allocated within the property of the legal entity which has created them and operate on the basis of the positions confirmed by it
- 4) Heads of structural divisions (branches and representations) of public associations are selected in an order provided for by the charter of public association and position concerning branches or representations
- 5) Heads of structural divisions (branches and representations) of religious associations are selected or appointed in an order provided by the charter of religious association and position concerning branches or representations
- 6) Heads of branches and representations of other forms of legal entity are appointed by the authorised body of the legal entity and operate on the basis of its power of attorney.

#### ECONOMIC ASSOCIATION

The authorised capital of any economic association should not be less than 100 minimum calculation index.

- 1) An economic association is a commercial organisation divided into shares (contributions) of its founders (participants) as the authorised capital admits
- 2) An economic association can be created in the form of a full association, special association, limited liability company or association with additional responsibility
- 3) An economic association, except for full and special associations, can be created by one person who becomes its unique participant. Only citizens can be participants of full associations and full companions in special associations
- 4) The constituent documents of an economic association are the constituent contract and the charter. The constituent document of an economic association founded by one person (one participant) is the charter
- 5) The constituent documents of an economic association (the charter and the constituent contract) are subject to notary assurance
- 6) Constituent documents of an economic association should contain (except where specified in points 4 and 5, Articles 41 of the present Civil Code) a condition on the size of shares of each of the participants; the size, structure, terms and order of contributions to authorised capital; the responsibility of the participants for infringement of duties on the contributions to authorised capital, and also other data provided by acts
- 7) The economic association can be the founder of other economic associations except for cases foreseen by legislative acts
- 8) The economic association has the right to be concluded by a professional participant of a securities market who has a licence for the realisation of activity on the conducting of a registers system of securities holders.

The order of formation, conducting and storage of the participants' register of economic association is established by the Republic Kazakhstan legislation.

Money, securities, things, property rights, including the rights to results of intellectual activity, and other property (except for special financial companies created according to the Republic of Kazakhstan legislation about securitisation, where authorised capital is formed exclusively by money) can form the contribution of the authorised capital of the economic association.

The contributions of the founders (participants) to the authorised capital in the natural form or in the form of property rights are estimated in monetary value under the agreement of all the founders or by decision of a general meeting of all participants of the association. If the cost of such contributions exceeds the sum equivalent to 20,000 of the monthly settlement indicators, its estimation should be confirmed by an independent expert.

The monetary estimation of participants' contributions to an economic association can be used as accounting documents of the association or the auditor report in the case of its re-registration.

Founders (participants) of the association within five years from the time of the estimation bear a joint liability before creditors of the association within the sum on which the contribution estimation is overestimated.

In cases when the right of property use is transferred to the association as a contribution, the size of this contribution is defined by a payment for use of such property estimated for all terms specified in constituent documents.

The entering of contributions in the form of personal non-property rights and other non-material items is not assumed.

Shares of all participants in the authorised capital and their share in the cost of property of the economic association (a share in property) are proportional to their contributions to the authorised capital, if other divisions are not specified by the constituent documents.

The participants of the economic association have the right to pawn and sell their shares in the association property, unless otherwise specified by acts or constituent documents.

The order and terms for entering the contributions to the authorised capital, and also the responsibility for default of obligations on formation of the authorised capital, are established by acts and (or) the constituent documents. The reduction of the authorised capital of the economic association is calculated after notice of all its creditors. Its creditors have the right to demand in this case the preterm termination of the association or the execution of corresponding obligations and compensation for losses.

Any reduction of the authorised capital infringing the order established by this point is the basis for the liquidation of the association by court decision under the statement of interested persons.

- 1) The supreme body of an economic association is the general meeting of its participants. Powers of the general meeting belong to the unique participant in economic associations founded by one person, except where these are full and special associations
- 2) The executive office (joint and (or) individual) is created by the economic association for carrying out the management of its activity and being accountable to the general meeting of its participants. The individual control person does not have to be selected from among its participants
  - The following can be created as joint bodies of association:
    - Board (management)
    - The supervisory board
    - Other bodies in cases provided for by acts or the decision of the general meeting participants of the economic association
- 3) The competence of the economic association bodies, an order of their election (appointment), and also an order for the acceptance of decisions, is defined by them according to the present Code, acts and constituent documents
- 4) The economic association can involve an auditor organisation which is not connected by property interests with the association or its participants (external audit) for the checking and acknowledgement of the correctness of the financial reporting.

An auditor check of an economic association should be carried out at any time on request of one or several participants of the association at their own or its expense.

The order of the auditor check of the economic association's activity is defined by legislation and the constituent documents of an association.

- 1) The association is deemed to be a full one if its participants bear joint liability under its obligations by all property belonging to them in the case of insufficiency in the property of the full association
- 2) Only citizens can be participants in full associations.

### SPECIAL ASSOCIATION

- 1) An association is deemed to be special if it includes one or more participants bearing additional responsibility under the obligations of the association for all property (full companions), and also if there are one or more participants with responsibility which is limited to the sum of the contribution brought by them to the property of the association (investors) and which do not accept participation in the realisation of commercial activity by the association
- 2) The legal status of the full companions participating in a special association, and their responsibility under the association's obligations are defined by rules about participants of full associations
- 3) The citizen can be a full companion only in one special association. A full companion in a special association cannot be the participant of a full association
- 4) Rules about full associations are applied to special to associations where it does not contradict provisions of the present Code about special associations.

## 5 – LABOUR

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Labour relations, and other relations directly connected with labour, are regulated by the Labour Code, labour contracts, the certificate of the employer, agreements and collective agreements.

The Kazakhstan Labour Code was adopted in 2007 and codifies employment-related legislative acts. It also regulates employment relations for both residents and non-residents in Kazakhstan.

According to the Labour Code, employment relations arise between an employer and an employee to realise the rights and obligations established by employment laws, individual and collective employment contracts. For this reason, employment relations are not covered by civil law. If a civil law agreement covers aspects that can be construed as an employment relationship, the mandatory provisions of Kazakhstan employment law will apply.

Labour provisions are contained within parties' agreements of the social partnership, collective and labour contracts, and certificates of employers, and are also governed by any worsening position of workers in comparison with the labour legislation of the Republic Kazakhstan. The conditions of agreements and collective and labour contracts cannot be changed unilaterally.

Under the labour contract, the worker performs work (labour) for compensation and observes the labour schedule, and the employer provides the working conditions, and pays to the worker at the due time wages in full and carries out other payments provided for by the labour legislation of the Republic of Kazakhstan, and under labour, collective contracts and the agreement of the parties.

Any infringement of a person's equality of rights and opportunities is forbidden by ending an employment agreement because of the following reasons:

- Pregnancy
- The presence of children
- Old age
- Physical inability.

These factors cannot limit the right of employment, except in cases provided for by the present legislation.

For any infringement of a person's equality of rights at a work establishment, the employer bears the responsibility set out by the laws of the Republic of Kazakhstan.

### EMPLOYMENT

#### EMPLOYMENT AGREEMENTS

As a general rule, employment relations are based on a contract between an employer and employee, which should contain specific provisions set out in the Labour Code, which is essentially designed to protect employee rights.

Only an employer's head officer or other persons authorised under a power of attorney may sign an employment contract on the employer's behalf.



### DURATION OF EMPLOYMENT AGREEMENTS

Employment contracts are usually put in place for a minimum of one year; the only exceptions are contracts in place for less than one year due to the short-term or seasonal nature of the work, or contracts concluded for a short-term replacement of temporarily absent employees. If a second employment contract is concluded with an employee who had earlier concluded a fixed-term contract and that second contract is in place for no less than one year, employment is automatically considered to be for an indefinite period.

### PROBATION

The maximum probationary period for new employees is three months.

Probation periods may not be applied to:

- Recent graduates of vocational schools, undergraduate schools and graduate schools on the grounds they are employed no later than one year from graduation
- People with disabilities
- Persons temporarily employed as a result of selection process.

### SALARIES AND BONUS PAYMENTS

Monthly salaries may not be less than the minimum wage, which in 2012 was KZT 17,439 (approximately USD 120).

### WORKING HOURS AND LEISURE TIME

The standard working week is 40 hours. Exceptions to this are made, for instance, for employees less than 18 years of age who may not work more than 36 hours per week, for overtime work or the performance of heavy manual labour.

Kazakhstan's labour legislation includes the concept of 'flexi-time', when the duration of a working day (shift) and (or) working hours per week may be more or less than the normal daily and (or) weekly amount. The Labour Code also allows the working day to be divided into anywhere between two and four shifts a day. Under this schedule, employees may not work two shifts in a row. Employees may also work according to a rotation schedule, which is based on a total of hours worked for a fixed period. The maximum rotation period is 15 calendar days. However, in certain cases, an employee may have written consent to extend a rotation period to up to 30 calendar days. Any rotation period extensions should be referred to in an employment contract.

Overtime may not exceed two hours a day (or one hour a day for those working in hazardous conditions), or a total of 12 hours a month or 120 hours a year. Payment for overtime and night work should be at least time and a half, while payment for work on holidays or days off should be at least at double time.

Women are entitled to 70 calendar days' paid pre-natal and 56 calendar days' post-natal maternity leave. In certain cases, post-natal maternity leave may be extended to 70 calendar days.

In addition, women are entitled to unpaid child care leave until a child reaches the age of three years. The value of maternity leave payments is salary based.

## 6 – TAXATION

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### FEDERAL TAXES AND LEVIES

The following main taxes and obligatory payments to the state budget are effective in the Republic of Kazakhstan:

- Corporate income tax
- Branch profits tax
- Capital gains tax
- Sales tax/value added tax (VAT)
- Excise tax
- Real estate tax
- Land tax
- Vehicle tax
- Social tax & social security
- Personal income tax.

### CORPORATE INCOME TAX

#### TAX OBJECT

Resident companies pay corporate income tax on their worldwide income, whereas non-resident companies pay tax on their income sourced in Kazakhstan.

Payers of corporate income tax are legal persons/entities, residents of the Republic of Kazakhstan and also non-resident legal persons/entities, carrying out their activity in the Republic of Kazakhstan through a permanent establishment or receiving income from sources in the Republic of Kazakhstan.

A company is considered resident if it is established under Kazakhstan law or if it has its governing body or place of actual management in Kazakhstan.

Tax is charged on all business income generated in Kazakhstan and abroad (including capital gains) with relief for tax deductible expenses. Objects of taxation for corporate income tax are:

- Taxable income
- Income assessed at the source of payment
- Net profit of a non-resident legal person carrying out activity in the Republic of Kazakhstan through a permanent establishment.

#### RATE

*The Corporate Tax Rate in Kazakhstan stands at 20 percent. Corporate Tax Rate in Kazakhstan averaged 22.86 percent from 2005 until 2018, reaching an all-time high of 30 percent in 2006 and a record low of 20 percent in 2009.*

#### TAX PAYMENT

The tax period for corporate income tax is the calendar year. Annual income tax returns must be filed with the official tax authorities by 31 March following the end of the tax year. Companies are required to make advance payments of tax on a monthly basis.

The following categories of taxpayers have the right not to assess and make advance payments of corporate income tax:

- Taxpayers whose tax-adjusted income for the period two years before the one in question does not exceed 325,000 times a monthly calculation index as determined under Kazakhstan tax law every 1 January
- Newly-established taxpayers – for the tax period in which the company registered with the state justice authorities, as well as in the following tax period
- Non-resident companies newly registered with the tax authorities as taxpayers operating in Kazakhstan via a permanent establishment and not via a branch or representative office – for the tax period in which the company was registered with the tax authorities, as well as in the following tax period.

## **DETERMINATION OF TAXABLE INCOME**

### **DEPRECIATION**

Tax deductions are available for depreciation of fixed assets including intangible assets and investment properties.

### **SHARES / NET COST**

Accounting for inventories for the purposes of taxation is performed in accordance with international standards of financial reporting and Kazakhstan Laws on accounting and financial reporting.

### **DIVIDENDS**

Dividends received from resident companies are not subject to corporate income tax (similarly, the payment of dividends is not tax deductible).

There is no withholding tax on dividends paid to non-residents or resident individuals providing that the following conditions are met:

- The shares on which the dividends are paid have been held for a period of not less than three years
- 50% or more of the share capital equity of the company paying the dividends is not owned by persons carrying on mineral extraction and other sub-soil mining activities in Kazakhstan.

### **INTEREST DEDUCTION**

Interest shall be deducted in accordance with the provisions of the tax code. The amount of interest is determined:

- 1) In the reporting tax period as the amount of interest recognised as an expense in the reporting tax period and/or in the tax periods preceding the reporting tax period
- 2) In the tax periods preceding the reporting tax period, as the amount of the interest recognised as an expense in the reporting tax period.

### **LOSSES**

Trading and capital losses may be deferred for a period up to ten years. Losses from the sale of shares and securities may be utilised against gains arising from the sale of such assets.

### **FOREIGN SOURCED INCOME**

Overseas income and gains are taxable along with domestic income and gains under normal Kazakhstan tax rules. A controlled foreign company regime exists to attribute a proportion of the profits of overseas companies to Kazakhstan companies holding at least a 10% interest in the overseas company. These rules apply where the overseas company pays tax at not more than 10% or where there are confidentiality laws in the relevant foreign jurisdiction.

### FOREIGN TAX RELIEF

The income taxes paid overseas by resident taxpayers on foreign-sourced income are creditable against corporate or individual income tax in Kazakhstan if the document certifying the payment of tax overseas is made available.

The amount available for offset is the lower of the following:

- 1) The amount of overseas tax paid on foreign-sourced income overseas
- 2) The amount of tax assessed in Kazakhstan on foreign-sourced income.

### CORPORATE GROUPS

There are no special provisions relating to the taxation of groups of companies in Kazakhstan.

### RELATED PARTY TRANSACTIONS

Certain transactions are subject to transfer pricing rules which impose arm's length pricing for tax purposes. These include the following transactions involving a related party where:

- 1) The other entity is incorporated in a low-tax jurisdiction
- 2) The transaction is a barter transaction
- 3) Where the other entity has recognised losses according to its tax returns for the two tax periods immediately preceding the year of transaction
- 4) Where the other party benefits from tax incentives or preferential tax rates other than ordinary (if related to cross-border transactions)
- 5) Transactions involve the off-set of debts between related parties.

### WITHHOLDING TAX

Kazakhstan-source income of non-residents and the proceeds from the sale of shares in subsurface users are subject to withholding tax (WHT) at the rates shown in the table below.

A non-resident legal entity is exempt from dividend WHT if:

- the holding period of shares or participation interest is greater than or equal to three years
- the entity paying the dividends is not a subsurface user, and
- 50% or more of the charter capital value of the entity paying the dividends is not the property of a subsurface user.

Types of income at a source of payment	WHT rate (%)
Dividends, capital gains, interest, royalties	15
Any income of an entity registered in a tax haven jurisdiction	20
Insurance premiums under risk insurance agreements	15
Income from international transportation services; insurance premiums under risk reinsurance agreements	5
Other income	20

Benefits paid by a company to a shareholder, founder, participant, or related party, falling under the definition of constructive dividends, are taxed at a rate of 15%.

### **BRANCH PROFITS TAX**

Overseas companies with permanent establishments in Kazakhstan are required to pay corporate income tax on the profits generated by their permanent establishments.

In addition, the overseas company is subject to a branch profits tax of 15% on its net (after tax) income. This rate may be reduced under the terms of international tax treaties.

### **CAPITAL GAINS TAX**

Income from the sale of assets (fixed assets) is taxed as part of ordinary income of the company and not under separate taxation.

Capital gains arising on the sale of the following are subject to a 10% tax:

- Real estate
- Transportation vehicles owned for less than a year by the taxpayer
- Securities and share in a legal entity.

### **SALES TAX / VALUE ADDED TAX (VAT)**

VAT is charged on the domestic supply of goods and services and the import of goods.

The current rate of VAT is 12%.

The following transactions are subject to a zero rate:

- Export of goods
- Turnover from production under a sub-surface management contract providing for VAT exemption for imported goods
- International transport services.

The tax code defines certain supplies as exempt from VAT, including:

- The supply of land and buildings used for residential purposes, with the exception of the sale of premises under non-residential premises
- Financial services including security transactions, banking and other transactions performed by banks and institutions authorised under their licence to perform particular banking transactions and transactions performed by other non-licensed entities within the framework of the authority set by the legislative acts of Kazakhstan
- The financial leasing of assets provided that certain requirements are met
- Medical and veterinary goods and services as per the list of goods and services set out by the government of Kazakhstan
- Services and works in the area of culture, science and education in Kazakhstan
- The services of lawyers and public notaries
- Other.

### PAYMENT OF VALUE-ADDED TAX

The tax period for VAT is the calendar quarter (or month). VAT payers are required to submit their VAT returns to the local tax authorities for each tax period not later than the 15th day of the second month following the tax period.

The payment of VAT for each tax period must be effected no later than the 25th of the second month following the tax period.

Value-added tax represents assessments for the cost of taxable turnover on sales, manufacture and the circulation of goods (works and services), and also deductions made on the import of goods into the territory of the Republic of Kazakhstan.

Value-added tax, payable to the budget on taxable turnover, is defined as the difference between the sums of the VAT charged (accrued) for sold goods (works or services) and the sum of the VAT which is payable for the received goods (works or services).

Payers of VAT are:

- 1) Persons who were registered under VAT in the Republic of Kazakhstan:
  - Individual entrepreneurs
  - Legal persons, except for official bodies
  - Non-residents who are carrying out activity in the Republic of Kazakhstan through a permanent establishment
- 2) Organisational subdivisions of a legal entity recognised as independent VAT payers.

Payers of VAT on the import of goods are persons importing these goods into the territory of the Republic of Kazakhstan.

Objects of taxation on the added value are:

- Taxable turnover
- Taxable imports.

The turnover on sale of goods for export is taxable under zero rates. Export of goods is export from the customs territory of the Republic of Kazakhstan.

The rate of tax to the added value is 13% and is applied to the size of the taxable turnover.

### EXCISE TAX

This is payable by individuals and corporate entities which produce or import certain products, including gasoline and diesel fuel, or who produce or assemble certain vehicles.

Exported products are exempt from excise duty.

Duty is payable on a calendar month basis and is due by the 20th day of the month following the end of the tax reporting period. A declaration must also be provided by the 15th day of the second month following the tax reporting period.

Payers of excises are physical and legal persons, and non-resident legal persons and their structural subdivisions, which:

- Manufacture excisable goods in the territory of the Republic of Kazakhstan

- Import excisable goods into the customs territory of the Republic of Kazakhstan
- Carry out wholesale or retail sale of gasoline and diesel fuel in the territory of the Republic of Kazakhstan
- Carry out the sale of bankruptcy assets of confiscated or ownerless excisable goods
- Carry out excisable activity of other kinds in the territory of the Republic of Kazakhstan.

Excisable goods are:

- All kinds of spirit
- Alcohol production
- Tobacco products
- Gasoline, diesel fuel
- Cars
- Crude oil, gas condensate.

An excisable service is the organisation and carrying out of lotteries.

Rates of excises are approved by the government of the Republic of Kazakhstan and are established in percentage to the cost of the goods.

### **LAND TAX**

This is payable by individuals and legal entities that either own land or have an interest in land, including:

- A right of ownership
- A right of permanent land use/tenure
- A right to a primary grant of temporary land use.

The amount of tax for agricultural land is calculated on a per hectare basis and is based on the quality of the soil, location and water supply of the land. Base tax rates on land used for settlement are established using square metres of an area. Base rates on industrial land are established by hectare.

Tax rates are determined under the tax code, subject to a reduction or increase by local agencies within the limits prescribed by the tax code.

The tax reporting period for land tax is the calendar year. Legal entities and sole traders must make quarterly payments in advance and provide a land tax return no later than 31 March following the end of the tax reporting period.

### **VEHICLE TAX**

This is payable by individuals and entities who own or lease vehicles which are subject to state registration in Kazakhstan.

Tax rates are determined on a monthly basis and are based on engine size, capacity or number of seats.

Legal entities must pay the charge by 5 July of the tax period concerned and provide a declaration no later than 31 March following the end of the tax reporting period.

### **SOCIAL TAX (PAYROLL TAX)**

This is payable by all employers at a flat rate of 11% (with rates established by article 317 of the tax code).

Payers of the social tax are:

- Individual entrepreneurs
- Private notaries, lawyers
- Legal persons who are residents of the Republic of Kazakhstan
- Non-residents who are carrying out their activity in the Republic of Kazakhstan.

This taxation takes the form of expenses of an employer paid to resident workers of a certain type of income, to workers who are non-residents and also on the incomes of foreign personnel.

### **SOCIAL SECURITY CONTRIBUTIONS**

These are payable by the employer at a rate of 5% (from 2010) on the wages/income of the employee, subject to a maximum of ten times the minimum monthly wage.

### **PERSONAL INCOME TAX**

Resident individual persons pay income tax on their worldwide income, whereas non-resident individual persons pay tax on their income sourced in Kazakhstan.

An individual person is considered resident if he/she:

- Resides permanently in Kazakhstan (i.e. spends at least 183 days there out of a 12-month period ending in the tax year)
- Is a payer of individual income tax at the rate of 10% on all income with the exception of dividends (subject to 5% tax from source).

Individuals generating income from business activities are subject to a tax similar to corporate income tax, although small and medium businesses are subject to a special tax regime.

Payers of individual income tax are physical persons having objects of taxation. Objects of taxation for individual income tax are:

- Income taxable at the source of payment
- Income which is not taxable at the source of payment.

The income of a taxpayer taxable at the source of payment includes:

- Salaries
- Income from a one-off payment
- Pension payments from accumulative pension funds
- Income in the form of dividends, compensations or winnings
- Grants (scholarships)
- Income from contracts of accumulative insurance.

The income of a taxpayer which is not taxable at the source of payment includes:

- Property income
- Income of an individual entrepreneur
- Income of lawyers and private notaries
- Other incomes.

Employment income is taxed at a flat rate of 10% for both residents and non-residents.

Dividends are taxed at 5% for residents. Dividends and capital gains are taxed at 15% for non-residents.



Other income is taxed at 10% for residents and 20% for non-residents.

## OTHER TAXES/LEVIES/PAYMENTS

### PROPERTY TAX

Payers of the tax on property are:

- A legal person having objects of taxation on the property right on a business and operational administration in the territory of the Republic of Kazakhstan
- An individual entrepreneur having an object of taxation on the property right in the territory of the Republic of Kazakhstan.

The objects of taxation for legal persons and individual entrepreneurs are fixed assets and intangible assets.

The tax base on objects of taxation is an average annual book cost of taxable objects, defined according to book-keeping data.

Legal persons calculate tax on property at the rate of 1% on the average annual cost of taxable objects. Individual entrepreneurs calculate tax on property at the rate of 0.5% on the average annual cost of taxable objects.

### GAMBLING BUSINESS TAX

Payers of tax from gambling businesses are individual entrepreneurs and legal persons carrying out their activity in the services of:

- Casinos
- Raffles
- Gambling machines
- Bookmaker offices.

Objects of taxation for the gambling tax are:

- Games tables
- Game-playing machines
- Cash desks of raffles
- Cash desks of bookmakers' offices.

### LEVIES

A number of levies are payable in Kazakhstan, including:

- Levies for state registration of legal persons and registration of branches and representations
- Levies for state registration of individual entrepreneurs
- Levies for state registration of the rights on real estate and transactions with it
- Levies for the state registration of radio-electronic means and high-frequency devices
- Levies for the state registration of vehicles
- Levies for the state registration of medical products
- Levies for transit of vehicles in the territory of the Republic of Kazakhstan
- Levies from auctions
- Licence tax for the right to perform certain kinds of activity
- Levy for issue of permission to use a radio-frequency spectrum for television and broadcasting organisations.

## PAYMENTS

A number of payments are due in Kazakhstan, including:

- Payment for using ground areas
- Payment for using water resources of superficial sources
- Payment for emissions to environment
- Payment for using fauna
- Payment for the use of forests
- Payment for the use of specially protected natural territories
- Payment for use of radio-frequency
- Payment for granting long-distance and (or) international telecommunication
- Payment for using navigable waterways
- Payment for placement of outdoor advertisements.

## CUSTOMS PAYMENTS

Customs payments include:

- Customs duties
- Customs fees
- Payment for a preliminary decision
- Tallage.

According to the tax code, taxpayers define objects for taxation and objects connected with taxation by the accrual method.

Operations in a foreign currency for tax purposes are recalculated in the national currency of the Republic of Kazakhstan (KZT) with application of the market rate of the currency exchange at the day of operation execution (payment).

Taxpayers who are carrying out various kinds of activity, for which the tax code provides different conditions of taxation, are obliged to have separate accounts on their taxation objects.

## SPECIAL PAYMENTS OF USERS OF SUBSURFACE RESOURCES

### EXCESS PROFIT TAX

Payers of excess profit tax are users of subsurface resources (except for those carrying out activity under contracts of production division, on mining of widespread minerals and underground water, and the building and operation of underground construction not connected with exploration and mining, provided that the given contracts do not provide for mining of other kinds of minerals).

The tax rate is established by the amounts provided in article 308 of the tax code.

### BONUSES

Bonuses are the fixed payments of a user of subsurface resources. A user of subsurface resources, on the basis of the individual conditions of the mining (using of subsurface resources), pays the following kinds of bonuses:

- Subscription
- Commercial detection.

### ROYALTIES

Royalty is paid by a user of subsurface resources separately on each kind of minerals mined in the territory of the Republic of Kazakhstan, irrespective of whether they have been sold (shipped) to buyers or used for their own needs.

Payers of royalty are users of subsurface resources carrying out mining operations, including the extraction of minerals from mineral formations.

The object of taxation is the volume of the extracted minerals or volume of the first commodity product received from the extracted minerals.

#### SHARE OF THE REPUBLIC OF KAZAKHSTAN ON PRODUCTION DIVISION

Payers are users of subsurface resources who concluded contracts on production division, if exceptions are not provided by the contract on production division.

The share of the Republic of Kazakhstan on production division is defined as the total cost of the profitable production which is subject to division between the Republic of Kazakhstan and a user of subsurface resources, after deduction of the user's share of the subsurface resources in profit.

## 7 – ACCOUNTING & REPORTING

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### ACCOUNTING

Rules of accounting in the Republic of Kazakhstan are developed in accordance with the Law № 234-111 of the Republic of Kazakhstan from 28 February 2007.

For accounting and financial reporting, the international and national standards of financial reporting establish an order of accounting for individual entrepreneurs and organisations operating in the territory of the Republic of Kazakhstan.

A legal person for conducting bookkeeping, being governed by the Law of the Republic of Kazakhstan on bookkeeping and financial reporting, by international and national standards of financial reporting and by other standard legal acts in the bookkeeping and financial reporting sphere, independently creates a registration policy on the basis of a company's structure, sector and other features of activity, and develops an order of control over operations and events, making other decisions necessary for the organisation of bookkeeping.

Depending on the volume of the registration work, the head of the organisation has a right to:

- Establish an accounting service as a structural subdivision headed by a chief accountant
- Introduce into the staff a position of chief accountant
- Transfer on a contractual basis bookkeeping and financial reporting to an accounting or auditor organisation or to a professional bookkeeper
- Lead bookkeeping personally.

The head of the accounting service (hereinafter referred to as chief accountant) is a chief accountant or other official who provides bookkeeping, the creation and presentation of financial reports and the formation of registration policy.

Functional duties of a chief accountant are defined in accordance with the provision laid out and approved by an individual entrepreneur or by the head of an organisation.

Conducting accountancy, a chief accountant provides:

- Constancy of accepted registration policy reflecting operations and events and valuation of assets and obligations during an accounting period
- Completeness in registration for an accounting period of all operations and events which have been carried out in this period and results of inventory of assets and obligations
- Correctness in the charging of income and expenses to accounting periods.

A legal person leads bookkeeping of the operations and events connected with the presence and movement of assets, obligations, capital, income and expenses in accordance with the working plan of the accounts of bookkeeping which are accepted by an individual entrepreneur or by an organisation.

The main characteristics and rules of accounting and financial reporting are regulated in Kazakhstan by the Accounting and Financial Reporting Law, under which small and medium-sized businesses are required to apply national accounting standards (NAS) or IFRS, at their discretion. Public and large companies are required to apply IFRS, as are banks.

## FINANCIAL STATEMENTS

Financial statements should include:

- A balance sheet
- A profit and loss statement
- A statement of changes in equity
- A cash flow statement
- Supplementary notes.

The accounting period for annual financial statements is the calendar year. Financial statements are prepared in Kazakh or Russian and stated in KZT. Financial reporting in Kazakhstan is based on the accrual method.

Included in the Accounting and Financial Reporting Law is a chart of accounts that is used to classify the various elements of financial reporting.

## AUDIT REQUIREMENTS

Audits, which are either mandatory or voluntary, are performed in compliance with the Auditing Activities Law and international standards on auditing (ISA), to the extent that they do not contradict Kazakhstan's legislation.

Audits are mandatory for:

- Joint stock companies
- Banks and other lending agencies
- Insurance companies, pension and investment funds
- Securities' markets participants and stock exchanges
- Subsoil users
- Companies deemed natural monopolies
- Kazakh companies that have negotiated investment contracts, and developers and engineering companies according to the Shared Investment in Residential Construction Law and others.

Companies undergoing a mandatory audit and publishing annual financial statements (in compliance with Kazakhstan's legislation) should also publish an audit report.

## REPORTING

Today Kazakhstan's economy is rapidly developing as more and more international and local companies consider expanding their operations in the country. Many companies are considering raising additional capital, including by means of initial public offerings on foreign financial markets.

One of the requirements for being able to publicly place shares is the compilation of financial statements in accordance with international financial reporting standards (IFRS). Moreover, from 2005, Kazakh companies locally registered as joint stock companies should be compiling financial statements in accordance with IFRS.

We believe this trend will develop further and that, in the near future, all Kazakh companies will be preparing their financial statements according to IFRS. However, many companies in Kazakhstan today are only beginning to move towards IFRS and are concerned about the problems they will face when transitioning from Kazakh Accounting Standards (KAS) to IFRS.

## 8 – UHY REPRESENTATION IN KAZAKHSTAN

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### CONTACT DETAILS

UHY SAPA-Consulting LLP  
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 Fax: +7 727 381 62 88  
[www.uhy-kz.com](http://www.uhy-kz.com)

Year established: 2000

Number of partners: 6

Total staff: 24

### CONTACTS

Liaison contact: Talgat Nurgaziyev  
 Position: General Director  
 Email: [n.talgat@uhy-kz.com](mailto:n.talgat@uhy-kz.com)

### OTHER IN-COUNTRY OFFICE LOCATIONS AND CONTACTS

Aktobe, Astana, Atyrau, Shymkent and Ural'sk.

### BRIEF DESCRIPTION OF FIRM

UHY SAPA-Consulting LLP is an honorary member of the Chamber of Auditors and Chamber of Professional Appraisers of the Republic of Kazakhstan. We currently hold the following licences and certificates: for the provision of legal services exclusive of lawyers (Ministry of Justice RK; 18.04.2003; registration No.876-6210-1907 LLP); for the management of property and the affairs of insolvent debtors during bankruptcy proceedings (No.0001695; 26.02.2004); for the right to prepare judicial reports based on special judicial-expert research of economic operations and financial credit research (No.931; 06.10.2004).

The company has considerable experience of auditor checks of firms of varying ownership structures in a wide range operating sectors. We have clients in the following sectors: energy (gas), the food-processing industry, hotels, wholesale and retail trade, building and construction, geology, municipal services, logistics enterprises, professional investors in securities markets, and many others.

Clients receive expert advice from our firm, allowing them to improve business indicators, optimise taxation strategies, and improve company financial planning. Our auditors are professional, reliable and practical in their client work, providing economic and timely service for our clients.

### SERVICE AREAS

Audit and assurance  
 Tax planning, compliance, review, general advisory  
 New company formation, including legal advice  
 Bookkeeping  
 Accounting, tax consulting, financial review  
 Business advisory services, including contract negotiations and dispute resolution  
 Legal advice  
 Liquidation/insolvency consulting

### SPECIALIST SERVICE AREAS

Manufacturing consulting

### PRINCIPAL OPERATING SECTORS

Trading Companies

## LANGUAGES

Kazakh, Russian, English.

## BRIEF HISTORY OF FIRM

The firm was formed in February 2000 as a joint-stock corporation.

In 2004, the firm's General Director, Talgat Nurgaziev, was recognised by the Chamber of Auditors as Best Auditor of the Year for "significant contributions to the development of audit practice in Kazakhstan" and was made an Honorary Member. For "merit in the development of auditor activities" in 2005, the firm received the flag of the Chamber of Auditors of the Republic of Kazakhstan. In February 2007, the firm was again recognised by the Chamber of Auditors for "contributions to the development of audit practice".

In May 2007, the firm's General Director, Talgat Nurgaziev, was inducted as an Academic of the International Informatization Academy (General Consultative Status, UN ECOSOC).

In addition, the firm has won several significant tenders, including:

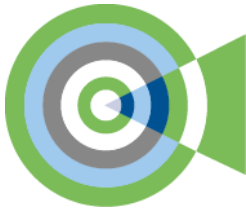
--In 2001/2002, the provision of consulting services to the Ministry of Finance to analyse and evaluate the efficiency of management activities in the privatisation of state property

--In 2002, the auditing of municipal government assets, and the financial audit of the municipal government of West Kazakhstan province.

--In 2002, participating in the auditing of the police departments of Almaty, Atyrau and West Kazakhstan provinces.

--Auditing and consulting on the activities of the Finance Department of the city of Almaty (the country's largest city and commercial centre) for 2006 and 2007.

The firm joined UHY in 2008, re-branding to UHY SAPA-Consulting LLP later the same year.



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## LET US HELP YOU ACHIEVE FURTHER BUSINESS SUCCESS

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