



OECD Investment Policy Reviews

KAZAKHSTAN



OECD Investment Policy Reviews: Kazakhstan 2012



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Foreword

This Review has been undertaken under the aegis of the Investment Committee and as a contribution to the OECD-Eurasia Competitiveness Programme, for which the European Commission and the UK Foreign and Commonwealth Office have provided financial support.

OECD Investment Policy Reviews aim to facilitate dialogue between OECD and partner countries, share experience and support investment policy reforms. The objective of the 2012 Investment Policy Review of Kazakhstan is to assess the country's ability to comply with the principles of liberalisation, transparency and non-discrimination and its policy convergence with recognised international investment standards such as the OECD Declaration on International Investment and Multinational Enterprises. It also considers the interaction and coherence of Kazakhstan's investment policy with other areas such as investment promotion and facilitation, trade and competition policy and responsible business conduct practices in light of the OECD Policy Framework for Investment.

The work on Kazakhstan's Review has been carried out in close co-operation with the government of Kazakhstan, in particular the Ministry of Industry and New Technologies. The examination of the background report by the Investment Committee's Advisory Group on Investment and Development took place on 7 December 2011 at the OECD headquarters in Paris in the presence of an official delegation from Kazakhstan led by Yerbol Orynbayev, Deputy Prime Minister of the Republic of Kazakhstan.

The report was prepared by Blanka Kalinova and Stephen Thomsen, Senior Economists in the Investment Division headed by Pierre Poret of the OECD Directorate for Financial and Enterprise Affairs, based on information provided by the government of Kazakhstan, comments by delegates to the Investment Committee and other sources. The information is current as of the end of 2011.

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Preface

H.E. Mr. Karim Massimov
Prime Minister of the Republic of Kazakhstan

This Review presents a blueprint for the next phase of reforms in our continuing effort to create a world class investment climate in Kazakhstan. Since achieving independence in 1991, we have viewed foreign direct investment (FDI) as an important means to increase competitiveness and economic growth, and improving the investment climate remains a top government priority. The OECD has been our long time partner through this process, publishing its first *Investment Guide for Kazakhstan* in 1998.

Since 1993, Kazakhstan has attracted more than USD 136 billion in FDI, 60%, of which has come from OECD countries. Much of this investment has flowed into the extractive industries. Thus, diversifying our economy is a critical policy objective to help us achieve sustainable long-term growth.

Towards this end, Kazakhstan has considerably reduced administrative barriers affecting businesses over the past two years. We are on track to join the WTO in the near future and, as part of this process, have accepted obligations to further liberalise foreign participation in the provision of services. Kazakhstan is also strengthening intellectual property rights protection and we have stepped up our fight against corruption.

This Review rightly emphasises the importance of dialogue between the state and investors. In this regard we intend to follow the report's recommendations to the fullest, providing greater transparency and clearer rules for state procurement. In addition we will introduce a consultation process for new laws and regulations, allowing investors to provide direct input and feedback into the legislative process. This is part of a more comprehensive effort to improve our business and investment environment.

This review is an important tool for policymakers and we are currently implementing the report's recommendations. We value the many important contributions that the OECD is making as we strive to build a competitive and sustainable economic future.

Summary and Policy Recommendations

Overview

Kazakhstan has enjoyed a long period of stability and prosperity, with one of the world's fastest growing economies over the past decade on the back of high commodity prices. The past decade is in sharp contrast with the post-independence period when the economy suffered through a total of six years of negative growth. Extensive reforms following independence finally paid off and the country was able to profit from the sharp rise in oil prices beginning in 1999. In common with other oil-producing countries, the government has created a sovereign wealth fund with the aim of enhancing competitiveness, economic diversification and sustainable development. The government is nevertheless far from achieving the long-standing goal of diversifying the economy away from natural resources to support broad-based economic development and to mitigate some of the macroeconomic volatility associated with fluctuations in global commodity prices.

Attracting foreign investors into priority sectors is one of the key platforms for achieving this diversification, yet the evidence from inward investment in non-extractive sectors suggests that much of the work of diversification still remains to be done. While Kazakhstan has received on average USD 11 billion annually over the past five years and its total stock of inward foreign direct investment (FDI) reached almost USD 89 billion at the end of June 2011 or 57% of GDP, both FDI inflows and exports from Kazakhstan are still highly concentrated (more than 70%) in natural resources. Considerable efforts have been expended to remove bureaucratic obstacles to investment, as measured in the World Bank's *Doing Business* rankings, but attracting FDI in non-extractive sectors will require more than just eliminating red tape. The OECD *Investment Policy Review* of Kazakhstan assesses both the regime covering foreign investment in the economy and key policy areas that shape the investment climate for both domestic and international investors.

Foreign direct investment regime

The Constitution of Kazakhstan provides the same rights and obligations to foreign entities and individuals as to nationals of Kazakhstan, unless otherwise specified in legislation. There is no general screening mechanism for foreign investment, and profits may be repatriated freely. Foreigners may invest in almost all sectors, with equity limits only in fixed-line telephony, mass media, air transport and pension funds. Equity restrictions in banking and insurance have been removed over the past decade, but branching restrictions still apply. Other sectoral restrictions include a local incorporation requirement in maritime transport and a prohibition on the ownership of agricultural and forestry land by foreigner-established enterprises.

Foreign investors face a number of operational restrictions once established which, although not explicitly discriminatory, place a greater burden on their operations than on those of local firms. The main operational restriction on foreign investment, primarily in the subsoil sector, involves a local content obligation covering goods and services, as well as labour. Hiring expatriate staff in all sectors involves a cumbersome process, and restrictions exist concerning the share of foreign staff in each type of position. These local content requirements have recently become more onerous, and violations of the regulations can lead to the annulment of an investment contract. Investors have complained about the difficulties in complying with these measures in terms of finding suitable local suppliers and qualified staff.

Many governments have experimented with local content regulations in the oil and gas sector as a way of building domestic supply capacity and spreading the benefits of the natural resource boom. In the best of cases, this approach should dovetail with the interest of investors in reducing costs by procuring goods, services and expertise locally, but targets for increasing local content need to be both realistic and flexible and must be accompanied by broader supporting policies to improve the business climate for firms operating in Kazakhstan. These policies include *inter alia* support for small and medium-sized enterprises and improvements in infrastructure, access to financing and human capital development. As in all other policy areas, the way in which local content requirements are implemented is also a key factor in shaping outcomes. Investors complain that implementation is uneven, irregular and non-transparent.

As a result of these statutory and operational restrictions, Kazakhstan has a score of 0.137 on the OECD *FDI Regulatory Restrictiveness Index* which is well above the average for OECD countries (0.091) and puts Kazakhstan as the 12th most restrictive in terms of the number and scope of statutory restrictions for

the 51 countries in the sample. Kazakhstan's score is better than that of the Russian Federation but worse than for Ukraine.

Other investment impediments

In spite of extensive privatisation in the past, the state is still present in many sectors of the economy. The state holding company Samruk-Kazyna controls a large share of the economy through its holdings in state companies. This share will decline somewhat once the four largest banks that were temporarily taken over during the crisis are sold off but will still represent a significant portion of economic activity. In some sectors such as infrastructure, the state is still either the sole provider or plays a dominant role through its control of the largest incumbent operator, such as KazakhTelecom. In the oil and gas sector, the role of the state has been increasing through the activities of the national oil and gas company, KazMunaiGaz, which is taking a larger stake in oil projects and has the first right of refusal when an investor is selling its stake.

The *National Security Law* (1998) takes a broad definition of national security by encompassing economic security (Article 18) which includes not only preserving and strengthening the resource and energy fundamentals of the economy but also increasing the share of local value added. The objective of economic security has also arisen in subsequent laws which define strategic sectors of the economy as well as strategic objects in the form of individual enterprises or natural resource projects. The state reserves the pre-emptive right to acquire these strategic objects if they are sold off and has specified a number of firms which are fully or partially state-owned as excluded from privatisation. In addition, since 2007 the state has had greater powers to amend or annul contracts in cases of substantial change in economic interests and threats to national security.

Investors were protected in the past from frequent changes in rules and their implementation by stability clauses which were enshrined in both the 1994 and the 2003 versions of the *Investment Law*. The stability clause, which protected investors from changes in the law for a period of ten years from when the investment was made, or, in the case of a contract with an authorised state body, until the contract expired, has been substantially watered down. The government understandably does not wish to tie its hands in the strategically important subsoil sector and does not need to offer the same concessions now as it did in the economically turbulent 1990s, but stability and predictability in both the rules and their implementation are important considerations for long-term investors. Stability clauses are a second-best solution for a poor regulatory environment, but if such clauses

are to be weakened, this must be accompanied by greater efforts to ensure predictability and transparency in planning, implementing and evaluating rules and regulations.

Stability is also promoted by providing recourse to international arbitration for investors when disputes arise. There is some evidence that foreign investors have less access to international arbitration as a result of new laws. Investors have expressed concerns about the 2003 *Investment Law*'s narrow definition of investment disputes, the lack of clear mechanisms for access to international arbitration and uncertainty concerning the binding nature of international arbitration judgements.

While many investor complaints have arisen in the subsoil sector and might not affect to the same extent investors in other sectors, it is not possible to ring-fence the subsoil sector in terms of investor perceptions. For better or for worse, the experience of natural resource producers in Kazakhstan shapes the way investors in other sectors evaluate investment opportunities in the economy and indeed the country's international ranking as an investment destination.

Going beyond *de facto* or *de jure* discrimination in the treatment of foreign investors, a good investment climate depends *inter alia* on transparency, public consultation on existing and proposed regulations, consistent implementation of rules, proportionality in the sanctions for corporate non-compliance, and on overall policy consistency across all rules and regulations affecting foreign investment. Responsible business conduct principles and practices are also increasingly recognised as important elements of the business climate, and their observance by local companies is a key to ensure a level playing field for all investors.

[Kazakhstan's Policy Framework for Investment](#)

Based on the *Policy Framework for Investment*, which helps to evaluate various policies relevant for countries' investment climate, Kazakhstan has deployed significant efforts to improve its investment environment. Recent initiatives have focused on reducing administrative burdens for small and medium-sized enterprises, including simplifying registration procedures and reducing minimum capital requirements. Several on-going initiatives, notably the e-government programme, and other planned measures, such as simplifying the permit system, have allowed the country to upgrade its position in international rankings, such as *Doing Business*. In some other areas, such as public consultation, the legal provisions exist but performance is not yet satisfactory.

Corruption remains a serious challenge in Kazakhstan. Damage resulting from corruption and economic crimes is estimated to amount annually to several tens of millions of Kazakhstan tenge (KZT) and the country's international ranking under Transparency International's *Corruption Perceptions Index* is low (105th position out of 178 countries) reflecting the persistence of problems in the judiciary, police and customs systems, as well as in protecting property rights, registering land and obtaining construction permits. Kazakhstan's Agency for Combating Economic and Corruption Crimes (Financial Police) is the main state body responsible for inter-agency co-ordination and legal oversight to prevent, detect, suppress, investigate and resolve economic, financial and corruption crimes and offences. Kazakhstan ratified the UN Convention against Corruption and as a participant in the OECD's Istanbul Anti-Corruption Action Plan it was subject to the second monitoring report in September 2011. Both the Kazakhstani authorities and outside observers see public procurement, use of subsoil resources and land, construction, customs and tax administration as the most vulnerable areas for corruption.

Kazakhstan has signed bilateral investment treaties with 45 countries (of which 18 with OECD member countries) and one with the Eurasian Economic Community (including Belarus, the Kyrgyz Republic, the Russian Federation and Tajikistan), which all guarantee national treatment or most-favoured-nation treatment and stipulate responsibilities of the parties, notably in case of expropriation. Existing bilateral investment treaties allow investors to decide on the type of arbitration procedures and where to submit eventual disputes, including the International Centre for Settlement of Investment Disputes (ICSID) or *ad hoc* arbitration under the United Nations Commissions on International Trade Law (UNCITRAL). Kazakhstan has ratified the main arbitration instruments, including the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and the *Washington Convention on the Settlement of Investment Disputes between the State and Nationals of Other States*. Expropriation provisions guarantee that such procedures are applied according to international standards and in a non-discriminatory manner. Kazakhstan ratified in 1995 the Energy Charter Treaty, which grants prompt, adequate and efficient compensation in the case of nationalisation. Kazakhstan joined the Multilateral Investment Guarantee Agency (MIGA) in 2001 which also provides guarantees against nationalisation.

Kazakhstan has developed the legal framework to protect intellectual property rights in line with international standards. The amendments to the Civil and Criminal Codes adopted in 2005 have made it easier to prosecute intellectual property rights infringements and introduced more severe penalties for violations. Although the number of inspections, administrative proceedings, offences detected and fines imposed in this field has considerably increased in

recent years, domestic and foreign operators still express concerns about insufficient IPR enforcement. The major problem is that current measures affect mainly domestically-produced goods but have remained inefficient to combat imports of counterfeit products. The creation of the Unified Customs Register of Intellectual Property Items of the Customs Union's members and recent amendments to Kazakhstan's Customs Code address this problem.

Investment promotion and facilitation is an important priority for Kazakhstan. Foreign investors are eligible for a wide range of available state support measures if they fulfil established criteria defined by specific programmes. Most investment promotion schemes require investors to conclude individual investment contracts with the authorities, with specific conditions for each project and related investment preferences. Such tailor-made arrangements often lack transparency and run the risk of administrative discretion, with the possibility of differentiated treatment of investors depending on their economic weight and local political connections. The government's 2010-14 Programme for Investment Attraction favours a selective approach to investment promotion as most of the state budget allocated to this programme will be channelled to the creation of three new Special Economic Zones (in addition to six already existing SEZs) and five industrial parks.

Kaznex Invest is the sole national agency in charge of investment promotion and attraction in Kazakhstan with a wide range of responsibilities to assist foreign investors in their establishment and operations in the country. Some other agencies can also provide material and financial support to foreign and domestic investment projects. The multiplication of different institutions with sometimes overlapping responsibilities could be costly and a source of confusion, especially for new foreign investors unfamiliar with local conditions. In 2012, the government will establish the investment ombudsman, an advisory body under its responsibility, composed of representatives of the main ministries. Its role will be to co-ordinate and control public investment promotion initiatives, monitor investment activities, protect investors' rights and interests and, more generally, ensure a favourable investment climate. The government believes that this mechanism will allow the government to address foreign investors' concerns at a high political level. Currently, the main platform for dialogue with foreign investors is the Foreign Investors' Council created in 1998, chaired by the President of the Republic, with foreign investors represented by high-level officers from large banking, energy and manufacturing companies. The Foreign Investors' Council has already recommended various actions to encourage economic modernisation and local development and to simplify tax and administration procedures.

As an open economy seeking to attract investment outside of the primary sectors, Kazakhstan needs a predictable and transparent trade policy and efficient and reliable cross-border trade procedures. Kazakhstan's long awaited and still pending accession to the WTO will be an important step in this direction and is expected to lead to the elimination of some measures, such as local content requirements which are currently applied. Kazakhstan has concluded several bilateral and plurilateral agreements mainly with the countries of the Commonwealth of Independent States (CIS). The Customs Union (CU) between Kazakhstan, the Russian Federation and Belarus came into force on 1 July 2010 with an immediate effect on the level of the country's external custom tariffs and an expected gradual harmonisation of customs procedures within the CU. Harmonisation of the business and trade environment in the CU area might lead to some reallocation of economic activities among the member countries, though Kazakhstan's comparative advantage will continue to suffer from its geographical remoteness and small domestic market.

Kazakhstan has developed a basic legal and institutional framework for competition policy. The Antimonopoly Agency has been increasingly active, notably in encouraging demonopolisation and the reduction of state interference in the economy, but the Agency does not seem to dispose of sufficient human and material resources to carry out these growing responsibilities in addition to its main mission to facilitate fair competition and prevent and investigate violations of antimonopoly legislation.

Kazakhstan policies promoting responsible business conduct

Responsible business conduct (RBC) principles and practices are recognised as an important part of the investment climate and therefore increasingly integrated within public and corporate policies aimed at attracting investment and enhancing sustainable development. The OECD *Guidelines for Multinational Enterprises*, which form part of the OECD *Declaration on International Investment and Multinational Enterprises*, provide recommendations addressed by governments to MNEs in all major areas of business ethics and set up general principles for government policies in support of private RBC initiatives and international co-operation in this area. Kazakhstan has not yet developed a comprehensive policy for promoting RBC and has not established a specific government institution in charge of these issues. One of the main channels for communicating and promoting observance of RBC principles and standards is to have an adequate legal framework, notably in the area of the environment and the fight against corruption.

Enterprises operating in Kazakhstan are subject to disclosure requirements for financial statements in compliance with International Financial Standards and to annual reporting on conflicts of interests. Other information including on social and environmental issues is disclosed on a voluntary basis. Market pressure for public disclosure is restrained given the limited number of publicly listed companies.

Kazakhstan has ratified most international agreements and conventions related to human rights and employment and industrial relations. Labour rights are enshrined in national labour legislation, notably the new *Labour Code* in force since June 2007. The *Code* is intended to provide a good labour relations framework allowing for labour market efficiency in the context of a social partnership though according to some NGOs the role played by independent trade unions remains limited.

Kazakhstan's development strategy has increasingly integrated environmental protection and sustainable development considerations. The *Environmental Code* adopted in 2007 embodies the main environmental laws and regulations and the obligations resulting from international environmental agreements which Kazakhstan has joined. The *Code* is based on best international environmental practices, notably as regards state environmental control and harmonisation with international environmental standards. The "Concept of a Transition to Sustainable Development for 2007-24" incorporates environmental concerns into the country's development strategy to ensure an adequate balance between economic, social and environmental objectives, taking into account international recommendations, notably the Agenda of the 21st Century. A Public Environmental Council set up by the Ministry of Environmental Protection includes national environmental NGOs, but public consultations on planned legislation are not systematic. Although several specialised NGOs seek to promote public awareness and education on environmental matters, further efforts by the government are warranted.

Governments adhering to the *OECD Guidelines for Multinational Enterprises* must establish a National Contact Point (NCP) – a government office charged with promoting RBC principles and standards embodied in the *Guidelines*, handling related enquiries in the national context and supporting mediation and conciliation procedures. Since many RBC issues are relatively new or pose specific problems in Kazakhstan, establishing an institution fulfilling some of the functions similar to those of NCPs could be particularly useful to raise awareness and engage discussions between the government and various stakeholders, including the business community, trade unions and specialised non-governmental organisations. Furthermore, the Procedural Guidance for institutional arrangements of NCPs and for their main activities advises on how to ensure that NCPs operate in accordance with the core criteria of

visibility, accessibility, transparency and accountability. These principles are also critical to improve the content and modalities for public-private dialogue on responsible business conduct, which is still underdeveloped in Kazakhstan.

Box 0.1. **General investment policy recommendations**

- Ensure that local content requirements are flexible, realistic, impose the least possible cost on business and are regularly evaluated. The government of Kazakhstan is increasingly concerned with ensuring that existing natural resource endowments generate wider economic benefits and the policy of local content development is one of its priorities. Leaving aside the outcome of negotiations to join the World Trade Organization which has rules against trade-related investment measures, local content requirements can significantly add to the administrative burden on an enterprise's operations and to the cost of doing business. Requirements concerning local content and expatriate employment, if they exist, should be both flexible and transparent and should be complemented by effective supply side policies to increase the quantity of local inputs and raise their quality. They should also be regularly evaluated to assess their effectiveness.
- Adopt best international practice concerning investment policies relating to national security. While safeguarding essential national security interests, Kazakhstan's policy should be designed and implemented to ensure the smallest possible impact on investment flows and be guided by the principles of non-discrimination, proportionality, transparency and accountability as recommended by the OECD *Guidelines for Recipient Country Investment Policies relating to National Security* adopted by the OECD Council in May 2009.
- Pursue the earlier reform agenda in the telecommunications sector to open up to greater competition and create an independent regulatory authority for the sector.
- Increase the access to agricultural land and forestry for foreign investors. Agri-business is a priority sector for diversification and yet Kazakhstan has more statutory restrictions on foreign investment in this sector than the OECD average and more also than in either the Russian Federation or Ukraine.
- Sell stakes in major Kazakhstani banks held by Samruk-Kazyna, when possible, and allow foreign banks to bid for those shares.
- Ensure that investment incentives are transparent and cost effective, including in Special Economic Zones. Kazakhstan's authorities might consider reviewing the existing investment incentive schemes in light of the OECD *Instrument on Incentives and Disincentives*, a part of the OECD *Declaration on International Investment and Multinational Enterprises*, which recommends making investment incentives as transparent as possible so that their scale and purpose can be easily determined. The OECD *Checklist for Foreign Direct Investment Incentive Policies* provides guidance for governments to carry out a thorough analysis of the costs and benefits of the incentive system in place.

Box 0.2. Recommendations for improving the investment climate

- Intensify the fight against corruption notably in the areas highlighted by the OECD's Istanbul Anti-Corruption Plan to which Kazakhstan is party, such as enhancing law enforcement, improving the independence of the judiciary and increasing transparency in public procurement.
- Strengthen corporate governance in state-owned enterprises. Given the size of the public sector in Kazakhstan, corporate governance of SOEs can have a strong impact on broader governance. The OECD *Guidelines on Corporate Governance of State-Owned Enterprises* advise countries on how to manage more effectively their responsibilities as company owners, thus helping to make state-owned enterprises more competitive, efficient and transparent.
- Provide more opportunities for private participation in infrastructure, including through Public-Private Partnerships (PPPs). Given the importance of infrastructure for national and international integration in such a large and remote country as Kazakhstan, the stock of infrastructure is inadequate and outdated. Infrastructure development remains the government's long-standing priority, but its implementation has been slow. One of the main reasons is an inadequate framework for PPPs. State-owned enterprises are also still dominant in many sectors.
- Improve overall policy consistency by *inter alia* avoiding potential overlaps when drafting new laws.
- Enhance and make systematic public consultation of existing and proposed regulations.
- Improve the implementation of intellectual property rights protection.
- Clarify/streamline the existing institutional framework for investment promotion.
- Further expand access of SMEs to financing. Small and medium-sized enterprises play a smaller role in Kazakhstan than in OECD countries. Beyond creating a specialised agency for SMEs, technical expertise in banks needs to be developed so that banks can properly assess the risks in lending to SMEs and better adapt their services to meet SME needs.
- Pursue improvements in trade policy transparency and predictability in line with future WTO accession commitments.

Box 0.3. Recommendations concerning responsible business conduct

- Put in place a coherent government strategy for facilitating responsible business conduct.
- Expand disclosure requirements for enterprises to include environmental and other non-financial performance.
- Encourage due diligence for responsible supply chains of minerals. In light of the importance of the mining sector in Kazakhstan and development of the country's outward investment projects in the region, the government might consider endorsing and encouraging dissemination among companies of the OECD *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.
- Consider creating an institution capable of fulfilling the role of promoting responsible business conduct similar to that of National Contact Points for the OECD *Guidelines for Multinational Enterprises*.

Chapter 1

Foreign Direct Investment in Kazakhstan

Attracting foreign investors into priority sectors is one of the key platforms for diversifying the economy, yet the evidence from inward investment in non-extractive sectors suggests that much of the work of diversification still remains to be done. While Kazakhstan has performed well in international comparisons, given the small size of its economy and a population of only 16 million – receiving on average USD 11 billion annually over the past five years and with a total stock of inward foreign direct investment (FDI) of almost USD 89 billion at the end of June 2011 or 57% of GDP – both FDI inflows and exports from Kazakhstan are still highly concentrated (more than 70%) in natural resources.

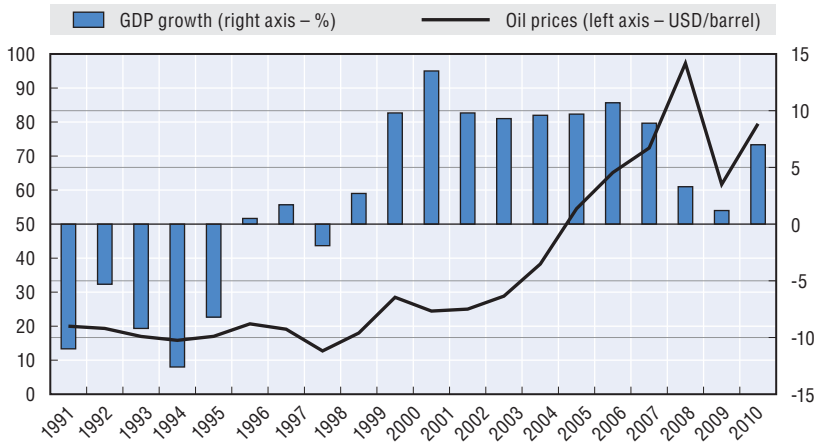
Introduction

Levels of inward investment in an economy depend on a range of factors, some of which the government of the host economy has little or no ability to influence. Kazakhstan is a large country but relatively remote, landlocked and with a small domestic market. Its primary appeal to date has been as a source of natural resources. It has the sixth largest reserve of natural resources in the world and the eleventh largest proven oil reserves. The Kashagan oil field under the Caspian Sea is estimated to represent the largest discovery worldwide in the past 30 years. Kazakhstan is also a source of gold, copper, cobalt, chromium, nickel and uranium, as well as iron and coal.

The government of Kazakhstan has a long-standing goal of diversifying its economy away from natural resources, in order to support broad-based economic development and to mitigate some of the macroeconomic volatility associated with fluctuations in global commodity prices. Attracting foreign investors into priority sectors is one of the key platforms for achieving this diversification. Success in this area will depend on a broad range of factors, but most crucially on the regime governing foreign investment and the way in which it is implemented.

Kazakhstan became an independent state in 1991 and like many other former Soviet republics embarked on an ambitious reform process. An OECD *Investment Guide to Kazakhstan* produced in 1998 testified to the depth and rapidity of reforms. “Kazakhstan has introduced a convertible currency, has completed a large part of its privatisation programme and is undertaking radical reform of pensions, financial services, competition legislation and public sector institutions” (OECD, 1998). Other reforms include demonopolisation, debt restructuring, customs and tax reform, establishing a securities and exchange commission, liberalising trade (and applying for membership of the World Trade Organization) and reforming the banking sector (UNESCAP, 2003). In recognition of these reforms, Kazakhstan was granted market economy status in 2002 by the United States.

The transition was not without difficulties. The economy shrank roughly 50% between 1991 and 1995, with six years of negative growth in the 1990s (Figure 1.1). The recovery beginning in 2000 has been equally dramatic, with growth averaging over 10% between 2000 and 2007. The more than doubling of oil prices in 1999-2000 and the subsequent steady rise in oil prices from 2002 to 2008 also helped to sustain high levels of growth.

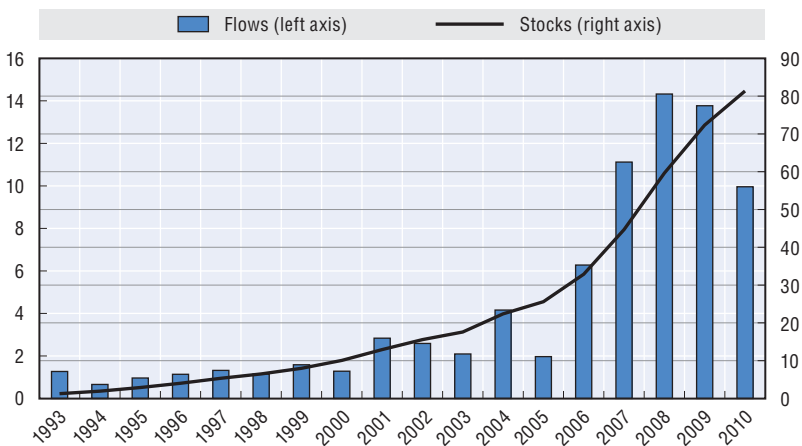
Figure 1.1. **GDP growth in Kazakhstan, 1991-2010**

Source: Bank of Kazakhstan; IEA.

Recent FDI trends

Foreigners were slow to respond to the improved economic prospects. FDI inflows picked up after 2000 and in 2001-05 were twice those of the preceding five years, but the real take-off in FDI inflows occurred after 2005, with inflows in 2008 reaching USD 14.3 billion or seven times as high as three years earlier (Figure 1.2). Kazakhstan has now received substantial amounts of inward investment and has performed well in international comparisons, given the

Figure 1.2. **FDI inflows and stocks in Kazakhstan**
USD billion



Sources: National Bank of Kazakhstan; IMF.

small size of its economy and a population of only 16 million. The vast majority of this investment has flowed into the natural resource sector, given the abundance of petroleum and other natural resources.

FDI in Kazakhstan by country of origin

The growing trend for establishing holding companies and sometimes headquarters in other parts of the world and the importance of tax havens both make it difficult to determine the exact origin of FDI in Kazakhstan. Some foreign investment in Kazakhstan channelled through holding companies might come from Kazakhstan itself. It is difficult to estimate with any certainty such round tripping, but it has been found for investments in many countries such as China or the Russian Federation where local firms invest at home through affiliates abroad either for tax purposes or sometimes to provide greater legal protection of investments. Round tripping is especially likely when tax havens are prominent in the investment statistics. In Kazakhstan, the British Virgin Islands are reported to be the fourth largest investor, but on the whole these offshore financial centres are less important than they often are in emerging economies, suggesting that only a small share of this investment might be round-tripping by Kazakhstani firms.

While round-tripping of investment might not be prominent in Kazakhstan, the use of holding companies (special purpose entities – SPEs) as a source of investment is clearly significant, as suggested by the dominance of investment from the Netherlands (40% of the total inward stock). The National Bank of Kazakhstan reports a figure for the total stock of FDI from the Netherlands which is five times as high as that recorded by the Dutch statistics. In the statistics generated by the National Bank of Kazakhstan, an investment by an SPE established in the Netherlands is counted as a Dutch investment, even if the ultimate beneficial owner is elsewhere. In contrast, the Dutch statistics do not report outward investments by non-residents through their holding companies in the Netherlands. Some projects in the extractive industry in Kazakhstan are implemented through SPEs. The role of SPEs might also help to explain the low share of investment from the Russian Federation (2% of the total stock), if Russian investors such as Vimpelcom choose to invest through SPEs in the Netherlands (Table 1.1).

When looking at FDI in Kazakhstan as reported in OECD home country statistics, US firms are the largest investors, with a stock of USD 9.6 billion at the end of 2010, followed by France, the Netherlands and the United Kingdom. The US oil company Chevron, for example, plays a prominent role in the Tengiz oil field (see Box 2.1, Chapter 2).

Table 1.1. **FDI in Kazakhstan by country of origin**

	USD million	Share ¹ (%)
Total FDI stock (as of 06/2011)	88 950	
Netherlands	33 397	40.1
United States	14 828	17.8
France	6 975	8.4
Japan	3 111	3.7
China	2 927	3.5
United Kingdom	2 633	3.2
Canada	2 209	2.7
Austria	1 979	2.4
Switzerland	1 881	2.3
Russian Federation	1 337	1.6
Korea	1 031	1.2
UAE	978	1.2
Germany	936	1.1
Turkey	504	0.6
Romania	449	0.5
Offshore financial centres/Tax havens	6 156	7.4
Other countries	1 565	1.9
International organisations	338	0.4
Unallocated	5 718	

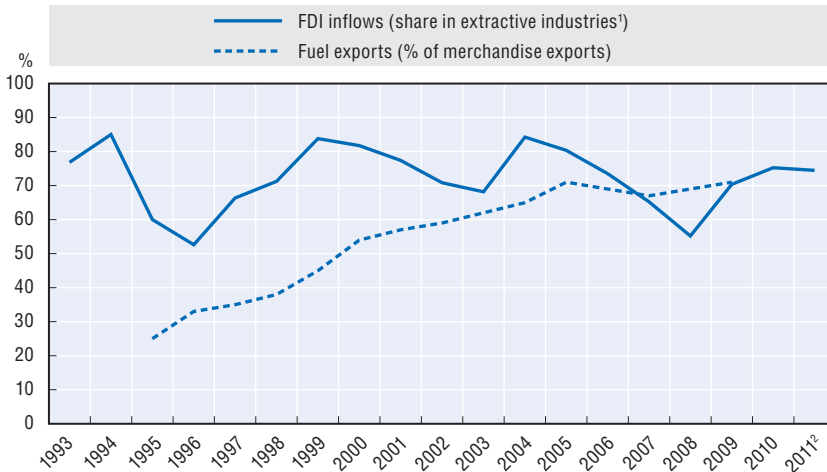
1. Excluding unallocated.

Source: National Bank of Kazakhstan.

FDI in Kazakhstan by sector

By sector, most FDI is in mining and real estate which includes geological surveys and prospecting (Figure 1.3, Table 1.2). Attracting foreign investors into priority sectors is one of the key platforms for achieving economic diversification, yet the evidence from inward investment in non-extractive sectors suggests that much of the work of diversification still remains to be done. Both FDI inflows and exports from Kazakhstan are still highly concentrated (more than 70%) in natural resources. Furthermore, although the extractive share of FDI inflows fluctuates in a cyclical fashion, there has been no secular downward trend over time. Considerable efforts have been expended to remove bureaucratic obstacles to investment, as measured in the World Bank's *Doing Business* rankings, but attracting FDI in non-extractive sectors will require more than just eliminating red tape

Another way to understand trends in foreign investment in Kazakhstan is to look at data on mergers and acquisitions (M&As).¹ Since the second half of 2006 there were 105 M&As involving Kazakhstani firms as targets, for which information is available. Out of the total amount of at least USD 14 billion (not all acquisitions provide a value), USD 8.6 billion or 60% involve the natural

Figure 1.3. **Industrial diversification of exports and FDI inflows, 1993-03/2011**

1. Includes prospecting and surveying.
2. Until March, 2011.

Sources: National Bank of Kazakhstan; World Bank.

Table 1.2. **FDI stock in Kazakhstan by sector, as of June 2011**

USD million

Total	88 950	
Agriculture, forestry, fishing	75	
Extractive industries	64 348	
Mining and quarrying		14 692
Exploration and prospecting		49 656
Manufacturing	8 592	
Basic metals		6 977
Electricity, gas, water	519	
Construction	1 486	
Distribution, repair	3 293	
Hotels and restaurants	165	
Transport (including pipelines)	234	
Telecommunications	792	
Finance	5 266	
Other	4 180	

Source: National Bank of Kazakhstan.

resource sector. Another USD 3.8 billion involve the banking sector, with investors from India, Israel, Italy, Korea, the UAE, the UK and the US acquiring shares in local banks. The remaining USD 2 billion involves mostly a large acquisition by Mittal Steel and USD 639 million in the telecommunications sector. The largest acquisitions by value are listed in Table 1.3.

Table 1.3. Largest foreign M&As in Kazakhstan, 2006-11

Investor	Country	USD million
CNPC	China	4 500
Kazakhmys Plc ¹	UK/Kazakhstan	2 288
Unicredito	Italy	2 083
Lukoil	Russian Federation	1 600
Mittal Steel	Netherlands	1 140
China Investment Corporation	China	939
Alnair Capital Holding	UAE	780
Korea National Oil Corp – KNOOC	Korea	780
Kookmin Bank	Korea	718
Vimpel Communications	Netherlands/Russian Federation	562
Uranium One Inc.	Canada	446
CITIC Resources Holdings Ltd	China	401
Petrolinvest	Bosnia-Herzegovina	286

1. Kazakhmys Plc has been listed on the London Stock Exchange since 2005 but has its principal operations in Kazakhstan.

Source: Dealogic.

Not all foreign investments in Kazakhstan necessarily involve acquisitions, particularly in the oil and gas sector. Acquisitions in this sector are more likely to represent the arrival of a late comer, such as the Chinese National Petroleum Corporation (CNPC), buying out an existing investor. Box 1.1 describes Chinese investment relations with Kazakhstan in more detail. Acquisitions as a mode of entry are more common in other sectors such as banking (see discussion in Chapter 2). Some acquisitions, such as by Kazakhmys in Table 1.3, are by Kazakhstani firms with a listing – and sometimes headquarters – in London or elsewhere. Some prominent Kazakhstani firms are listed on the London Stock Exchange, for example, including 18 companies in 2005-07 (Unicredit, 2008).

Box 1.1. Kazakhstan-China investment relations

By mid-2011, China's FDI stock had become the 5th largest in Kazakhstan (excluding tax havens) and three Chinese companies participated in the largest foreign M&A deals recorded in Kazakhstan in 2006-11. With several important investment projects recently signed, this already important Chinese presence will further intensify in the near future. The strengthening of relations between the two countries reflects their complementary interests: while China is keen to participate in exploiting Kazakhstan's abundant natural resources, Kazakhstan seeks to diversify its economy and sources of investment.

Box 1.1. Kazakhstan-China Investment Relations (cont.)

China's financing and technical expertise focuses on the two main areas:

- Transport: a new railway crossing between the Chinese border and Almaty at Khorgos was to be finished in 2011; a new project to build a high-speed rail link between Astana and Almaty; a motorway project to facilitate links between western Europe and western China.
- Natural resources: the China Development Bank will lend USD 2 billion to Samruk-Kazyna, Kazakhstan's sovereign wealth fund, to finance the Sokolov-Sarbay ore-mining facility and upgrading of the chromium industry, as well as a USD 5 billion credit line from China for construction of a petrochemical plant in Kazakhstan.

China also seems interested to participate in developing Kazakhstan's potential in agricultural production but reports on the possible leasing of land by China have not been confirmed.

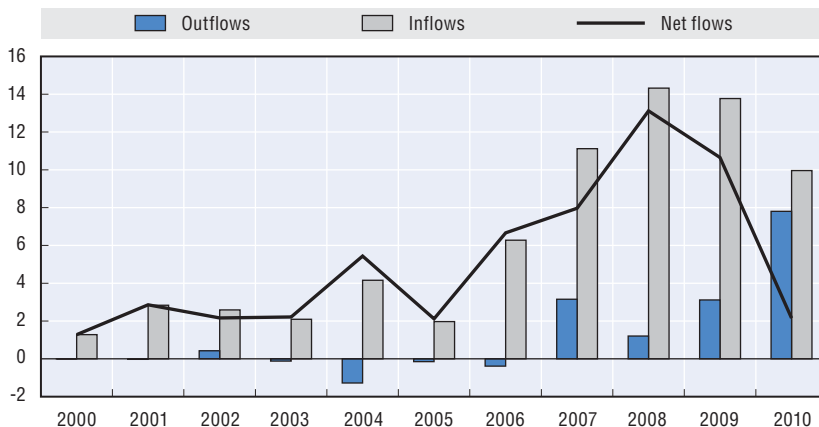
Source: Economist Intelligence Unit, *Country Report Kazakhstan*, April 2011.

Outward investments from Kazakhstan

Outflows of direct investment from Kazakhstan have grown dramatically in the past five years and by 2010 reached 78% of the value of inflows (Figure 1.4). UNCTAD reports only seven parent companies of multinational enterprises operating out of Kazakhstan. Of these seven, three are state-owned and have invested USD 766 million abroad since 2003, including the purchase by KazMunayGaz, the national oil and gas company, of 75% of a Romanian oil company, Rompetrol, in 2007. None of these Kazakhstan-based firms ranks among the top 100 non-financial MNEs from transition and emerging economies.

Figure 1.4. FDI outflows and inflows, 2000-10

USD billion



Source: National Bank of Kazakhstan.

Note

1. Kazakh official statistics do not distinguish between M&As and greenfield investments. Such data are scheduled to be included in the future as part of a new statistical methodology for the external sector.

Bibliography

Economist Intelligence Unit-EIU (2011), *Country Report: Kazakhstan*, April.

OECD (1998), *Investment Guide for Kazakhstan*, Paris.

UNESCAP (2003), *Investment Climate in Kazakhstan: Country Report*.

Chapter 2

Foreign Direct Investment Regime

Kazakhstan has no general screening mechanism for foreign investment and few sectoral restrictions. The Constitution of Kazakhstan provides the same rights and obligations to foreign entities and individuals as to Kazakhstani citizens, unless specified elsewhere in legislation. In terms of the typical statutory restrictions on FDI found in other emerging economies, Kazakhstan is relatively open to foreign investment. Foreigners may invest in any sector, with equity limits in only a handful of sectors. But at the same time, a number of measures introduced in the past decade to diversify the economy and create greater local value added from foreign investments, particularly in the subsoil sector, have increased operational restrictions on foreign investment and added greater uncertainty for investors.

Overall policy approach towards foreign investment

Kazakhstan has no general screening mechanism for foreign investment¹ and few sectoral restrictions. The Constitution of Kazakhstan provides the same rights and obligations to foreign entities and individuals as to Kazakhstani citizens, unless specified elsewhere in legislation. In terms of the typical statutory restrictions on FDI found in other emerging economies, Kazakhstan is relatively open to foreign investment. Foreigners may invest in any sector, with equity limits in only a handful of sectors. But at the same time, a number of measures introduced in the past decade to diversify the economy and create greater local value added from foreign investments, particularly in the subsoil sector, have increased operational restrictions on foreign investment and added greater uncertainty for investors.

Although Kazakhstan has an *Investment Law* from 2003 governing both foreign and domestic investment, many other pieces of legislation concern foreign investors. In the oil and gas sector, for example, the main laws and regulations governing the sector are the *Subsoil Law* and the *Tax Code*. Other prominent legislation includes the *National Security Law*, *Laws on Arbitration*, the *Law on Special Economic Zones* and rules on hiring foreign personnel.

Many of these laws have been extensively amended, sometimes in rapid succession, with in most cases a new version promulgated since 2003 (Table 2.1). It is not unusual in a transition economy for laws to be replaced within a decade – the conditions of the 1990s in Kazakhstan were very different from those a decade later – but this legislative evolution also speaks to an evolving policy stance towards foreign investors which can be seen in the many small and large changes in the legal language from one version of a law to the next. One consequence is that stability clauses which were an important basis for investment in the 1990s have been steadily eroded. Important laws concerning foreign investment are each discussed separately below.

Table 2.1. **Principal legislation governing foreign investment in Kazakhstan**

Existing legislation (date of entry into force)	Earlier legislation
Constitution	
Civil Code, 1999	Civil Code 1994
Law on National Security, 1998	
Law on Investment, 2003	Law on Foreign Investment, 1994 (amended 1997)
	Law on State Support for Direct Investments, 1997
Land Code, 2003	Law on Land, 1995
Customs Code, 2003	
Law on Arbitration Courts, 2004	
Law on International Commercial Arbitration, 2004	
Labour Code, 2007	
Rules of Hiring Foreign Labour Force, 2007	
Law on State Procurement, 2007	Law on Government Procurement, 1997
Law on Samruk Procurement, 2007	
Tax Code, 2009	Tax Code, 2001
Transfer Pricing Law, 2009	Transfer Pricing Law, 2001
<i>Sectoral laws</i>	
Law on Banks and Banking Activity, 1995	
Law on Insurance Activities, 2000	
Law on Electricity, 2004	
Law on Communications, 2004	
Law on Subsoil and Subsoil Use, 2010	Law on Subsoil and Subsoil Use, 1996
Law on Mining, 1996	

Horizontal policies affecting FDI

The Law on Investment

Foreign investment in Kazakhstan is governed by the 2003 *Investment Law*, although a range of important sectors and issues is covered by more specific laws and many prominent investor countries have signed bilateral investment treaties offering similar protections which take precedence over domestic law. The Law merged two earlier laws for foreign and domestic investment, thereby ensuring equal treatment of both foreign and domestic investors. It guarantees the rights of investors in the event of expropriation and concerning the free repatriation of capital, as well as defining the measures of state support for investments and the procedures for resolving disputes. It also offers a guarantee of legislative stability under certain conditions. While the new law follows the basic structure of the older one, it is nevertheless less favourable to investors in a number of areas, as discussed below.

The first *Foreign Investment Law* was enacted on 28 December 1994. A key component of the law was a stability clause (Article 6) in the form of protection from legislative changes for a period of ten years from when the

investment was made, or, in the case of a contract with an authorised state body, until the contract expired. In the event that a foreign investment was adversely affected by legislative changes, the investor was entitled to prompt, adequate and effective compensation. The guarantee did not extend to changes in legislation passed to ensure national security, environmental safety, and public health and morality. Following a 1997 amendment, guarantees no longer applied to changes which amend the procedure and conditions (including taxation and state regulations) on the import, production and or sale of excisable goods as well as the import of excisable goods intended for sale without processing (OECD, 1998).

Like the 1994 Law, the 2003 Law offers guarantees of legislative stability but these guarantees do not cover the following: i) changes in the legislation of Kazakhstan or legislation coming into force, or alterations in international treaties signed by Kazakhstan that change the procedures for the import, production and sale of excisable goods; and ii) changes and amendments made to legal acts of Kazakhstan to ensure national security and environmental safety, health or public morality. In keeping with the 1997 amendment to the earlier law, excisable goods such as oil are no longer guaranteed stability. Furthermore, while the 1994 Law provided explicit guarantees against a change of laws, the 2003 Law promises only the stability of contracts (Mack, 2006). These changes only apply to new contracts; existing ones are still covered by the earlier, more favourable treatment. Article 23 of the 2003 Law states that any changes will not apply to contracts concluded with the authorised state body prior to the new Law.

Beyond the watering down of stability clauses, investors have also expressed concerns about the new law's narrow definition of investment disputes which does not cover disputes between private entities, the lack of clear mechanisms for access to international arbitration and uncertainty concerning the binding nature of international arbitration judgements (see Chapter 3).² Investors have also complained that, compared to the 1994 Law, the new Law neither provides clear grounds for expropriation, nor requires "prompt, adequate and effective compensation at fair market value" (US Department of State, 2011).

The *Investment Law* is only one consideration for actual and potential investors. With the changes in stability clauses, recourse to international arbitration and other measures, other laws and international investment agreements assume a higher importance. In particular, with the removal of taxation from the protections offered by stability clauses, the *Tax Code* itself is an important element of the evolving investment climate, particularly in the oil and gas sector.

Taxation

As with the *Investment Law*, tax policies have evolved in line with the overall direction of policy. An early *Tax Code* (2001) was amended several times – and with each change became more restrictive for the extractive sector – before being replaced by a new *Tax Code* on 1 January 2009. The differences between the two Codes and the many amendments to each provide a clear picture of the evolving strategy of the government towards foreign investors. An overall aim of the new *Tax Code* is to shift some of the tax burden away from small and medium-sized enterprises and the non-extractive sector and towards extractive industries. The rate of corporate income tax was reduced significantly from 30% to 20% as of January 2011, although further expected reductions have been put off as a result of the global financial crisis. At the same time, a number of tax concessions were eliminated, including a corporate income tax exemption for up to ten years and property and land tax exemptions for up to five years.

Many of the changes to tax legislation over the past decade have focused on the extractive sector. Royalties have been replaced by a mineral extraction tax which varies with the volume of production and the price of oil. Other taxes on extractive industries include signature and commercial discovery bonuses, reimbursement of historical costs, an excess profits tax and a rent export tax which varies with the price of oil. The excess profits and rent export taxes were both introduced in 2004, together with a mechanism to guarantee the state a share of profits under Production Sharing Agreements (PSAs), irrespective of any deterioration in contract implementation (Kennedy and Nurmakov, 2010). Other amendments at the time clarified which investment costs could count as production expenditures under PSAs.

With the advent of the new *Tax Code*, PSAs are no longer possible in oil and gas, although existing PSAs nevertheless remain in effect. All future contracts are expected to be Excess Profits Tax (EPT) contracts which are not stabilised.

Duties on exports of crude oil have varied over time since they were established and were at one point set at zero. The rate of duty was raised in 2010, setting off a USD 1 billion dispute with foreign investors in the Karachaganak condensate field (USTR, 2011).

The earlier *Tax Code* from 2001, prior to amendments in 2003-04, provided for some stability in the area of taxation: taxation terms in a subsurface contract could only be amended in accordance with changes in legislation by agreement of the parties, i.e. not unilaterally by the state (Mack, 2006). The new *Tax Code* eliminates this possibility for new subsoil use agreements, including almost all concession agreements. For existing PSAs, the government will only guarantee tax stability if parliament ratifies the contracts (US Department of State, 2011). The absence of tax stabilisation

leaves investors in the sub-soil sector open to various changes in tax legislation, including those concerning royalties and production sharing, environmental fees or other regulatory levies, and special fees by regional or local authorities (Mack, 2006).

Going beyond the actual tax rates and the various forms of taxation faced by investors, concerns have also been expressed in the investment community about tax administration. World Bank *Enterprise Surveys* show that investors in Kazakhstan have a much higher number of visits and required meetings with tax officials compared to enterprises in other Central Asian and Eastern European countries. US investors also report taxation as one of their top concerns, reporting frequent harassments by local and national “financial” police.³ Discretionary behaviour by tax administration officials and the absence of adequate appeals mechanism have long been criticised by investors (UNESCAP, 2003).

Transfer pricing

Related to the general question of taxation is the question of the rules governing transfer pricing. In this area, Kazakhstan’s legislation has moved closer towards international standards. The *Transfer Pricing Law* from 2001 diverged from OECD standards in determining proper market price and thereby did not fully account for all cost and quality differences. Under the 2001 Law, transfer pricing could arise even in transactions between unrelated parties (US Department of State, 2008). According to the American Chamber of Commerce, the new *Transfer Pricing Law* (effective 01/2009) has a higher level of compliance with the OECD Transfer Pricing Model, although it still leaves “room for improvement, including further compliance with the OECD Model, elimination of transfer pricing controls on internal transactions related to international operations and removal on limitations on the quotation period”.⁴

Local content

The government of Kazakhstan is increasingly concerned with ensuring that existing natural resource endowments generate wider economic benefits and the policy of local content development is one of its priorities.⁵ One official estimate of local content in foreign projects was only 10-15% in 2008.⁶ Although estimates of local content levels vary widely, particularly between foreign investors and the government, most estimates put the share of local content far below that found in other oil exporting countries. In an effort to increase the use of local inputs of goods and services, as well as labour (discussed below), in production by foreign investors in Kazakhstan, the government has implemented local content requirements, particularly in the oil and gas sector but covering other sectors as well.

An 1999 amendment to the *Oil and Gas Law* implemented in 2002 required companies operating in these sectors to favour local goods and services, as well as government involvement and approval at each stage of procurement. The government reportedly agreed to fine tune the new regulations better to take into account the difficulties faced by firms in complying (Dun and Bradstreet, 2005). Amendments to the *Subsoil Law* in late 2005 obliged potential investors to specify in their tender proposals what actions they would take to fulfil local content requirements. The 2005 *Law on Production Sharing Agreements* which has since expired also called for purchases of local goods and services and the hiring of nationals of Kazakhstan in offshore oil and gas exploration (Hindley, 2008). The new *Subsoil Law* (2010) also contains explicit provisions for local purchases.

A new Law “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Local Content” was adopted at the end of 2009, requiring contracts signed between the government and investors to specify a minimum percentage of local content. Although the Law did not explain how to apply the regulations to existing contracts, the Ministry of Oil and Gas has been introducing changes to existing contracts to comply with the local content requirements. Over 500 contracts had been modified by 26 January 2010 (US Department of State, 2011). Local content requirements apply to government agencies, state-owned enterprises, national holding companies such as Samruk, and foreign and domestic subsoil users and is now reflected in the 2010 *Subsoil Law* and other relevant laws. Rules on tendering procedures stipulate that Kazakhstan companies are entitled to up to a 20% rebate compared to any foreign company participating in the same bid to supply goods and 15% for works or services.

To oversee local content policies and to assist local producers in meeting the price and quality requirements of foreign investors, the government created the National Agency for Local Content Development (NALCD) in June 2010. According to the rules on local content, sub-soil companies have the right to develop their own local content development programme based on market analysis of the availability of local producers. After the programme is approved by the authorised ministry, the company can sign an additional agreement to reduce the local content requirements in the contract.

In spite of this potential softening of the local content policies, investors have cited many difficulties in complying with the regulations, including: the poor quality of local goods; a lack of domestic suppliers producing specialised products; inadequate technological capacity of existing local suppliers; insufficient local human capital; limited interaction among domestic producers, subsurface users and the government; and the mismatch between short-term goals to raise local content and the long-term requirement for complementary policies to build capacity (Ospanova, 2010).

Many governments have experimented with local content regulations in the oil and gas sector, including in the past Norway and the United Kingdom but also Brazil, Ghana, Nigeria and others. These various policies all share the goal of building domestic supply capacity and spreading the benefits of the natural resource boom. In the best of cases, this approach should dovetail with the interest of investors in reducing costs by procuring goods, services and expertise locally, but targets for increasing local content need to be both realistic and flexible and must be accompanied by broader supporting policies to improve the business climate for firms operating in Kazakhstan. These policies include *inter alia* support for small and medium-sized enterprises and improvements in infrastructure, access to financing and human capital development. As in all other policy areas, the way in which local content requirements are implemented is also a key factor in shaping outcomes. Investors complain that implementation is uneven, irregular and non-transparent in Kazakhstan (US Department of State, 2011). Since contracts which do not fulfil their local content obligations can either be suspended or annulled, it has been argued that one of the objectives of the policy is to apply pressure on existing investors to renegotiate their contracts (Osplanova, 2011).

Furthermore, some investors at the 20th Plenary Session of the Foreign Investors' Council (www.fic.kz) in 2008 cautioned that the 20% price differential favouring Kazakhstani firms might make it harder for local firms to become internationally competitive. As a remedy, the representative of Baker and McKenzie suggested the discount for local firms should be reduced over time for local firms that have a long experience in supplying goods and services to oil and gas companies.

Since local content requirements are not permitted under the Trade-Related Investment Measures (TRIMs) agreement, these measures would likely be modified and possibly phased out as part of Kazakhstan's accession to the WTO – as was the case for China after 2001. Local content provisions are already precluded in some bilateral investment treaties.

Foreign labour and key personnel

Local content policies also apply to labour, combined with increasingly stringent rules on hiring foreign labour, including key personnel. Relevant laws are the *Law on Employment* (2007) and the *Rules on Hiring Foreign Labour*⁷ (December 2007), as amended most recently in early 2011. Staffing requirements for companies working under Production Sharing Agreements are agreed individually in the contract, but these can be overruled by national laws – most recently seen with the move to make all tier 2 and 3 personnel 90% local by 1 January 2012.

Foreign investors have been complaining about the difficulties in hiring foreign labour for most of the past decade (USTR 2011). Regulations from 1999 limited the number of work permits to 7 000, increasing to 10 500 in 2001 after problems arose when the quota was reached. The quota has steadily increased over time for each category of worker, including key personnel. New regulations on foreign labour were adopted at the end of 2007, ostensibly with the aim of simplifying the issuance of work permits. But investors nevertheless complained about the imposition of additional and onerous requirements (USTR, 2009). Visa requests are often denied, sometimes without justification or possibility of appeal, for a shorter period than that requested, or conditional upon training or hiring of local personnel (Hindley, 2008).

Work permits are generally offered for one year, with the possibility of an extension for at most two years for Category 1 workers (managers, etc.) but not for other categories. In requesting a work permit, the employer is required to fulfil a number of steps: publish a job advertisement in local newspapers in Kazakh and Russian; conduct interviews of local citizens, together with representatives of the local authorities responding to the advertisement; and provide a justification of why Kazakhstani citizens were not ultimately chosen. After these steps, the local authorities have 15 business days to decide whether to issue a permit. Local authorities may attach conditions to the permit stipulating obligatory training of a local employee with a view to replacing the expatriate employee when the permit expires or the hiring of additional Kazakhstani employees. The whole process is estimated to take 1-2 months (Baker and McKenzie, 2011).

Training requirements depend on individual contract arrangements, but in practice around 1% of a project budget should be earmarked for training programmes and workforce development, including overseas assignments.

Work permit restrictions do not apply in certain cases: top management positions in branches and representative offices; chief executive officers in companies concluding contracts over USD 50 million and managers in firms operating in priority sectors. They are also not applied for the three largest projects (Tengiz, Karachaganak and Kashagan), based on an exemption signed in October 2011 lasting until 2015.

Amendments to existing legislation were adopted in February 2011 which tightened the rules governing work permits in the following ways:

- *Ban on secondment of foreign staff.* Prior to the new rules, employers had frequently obtained work permits for expatriates and then seconded them to other entities operating in Kazakhstan. The new rules ban this practice and impose a 12-month bar on further expatriate permits for employers seconding their foreign staff.

- *Redefinition of employee categories.* Restrictions vary according to the category of employee. The first category was previously limited to chief executives but has now been expanded to include other types of executives and technical experts.
- *New limits on employment by category.* In 2011, foreign staff are limited to 50% of Category 1 and 30% of Categories 2 and 3 (managers, specialists and skilled workers), falling to 30% and 10% respectively in 2012. The new rules in this area already incorporate a provision (item 19-1) for their annulment once Kazakhstan becomes a member of the WTO.
- *Limits of work outside of the region issuing the permit.* Previously, foreign staff could spend 120 days working in other regions of Kazakhstan per calendar year but now may only spend 60 days.⁸

These amendments do not affect foreign staff implementing projects under the 2010-14 Industrialisation Map of Kazakhstan Programme. On the positive side for investors, the amendments also speed up the decision-making process of local authorities when issuing or renewing a permit. But at the same time, they risk imposing a heavy burden on foreign investors as they adjust their operations in order to comply with the more onerous requirements of the 2011 amendments. The new measures must also be complemented with efforts to increase the supply of local human capital. Foreign investors already complain about a lack of skilled workers and technical professionals to fill the pre-existing quotas (US Department of State, 2011).

Some BITs contain provisions on the entry and stay of foreign personnel.

Sectoral restrictions on foreign investment

Oil and gas

The oil and gas sector represents the lion's share of FDI into Kazakhstan (Chapter 1), and many rules and regulations affecting foreign investors are specific to that sector. Because of the overall importance of the sector within the economy, these sector-specific rules play a large role in determining the perception of the broader investment climate. Legislation covering all sectors but with special provisions for oil and gas, such as the *Tax Code* and the *Local Content Law*, were described above. The principal legislation affecting foreign investors in oil and gas projects is the *Subsoil Law*.

Subsoil law and amendments

The original *Subsoil Law* dates from 1996 but has been amended many times. It was finally replaced with a new *Subsoil Law* in 2010. With each amendment, the role of the state in the sector and its share of the revenues from oil production have grown.

Table 2.2. **Amendments to the Subsoil Law, 1996-2010**

Law on the Subsoil and Subsoil Use	27 January 1996
<i>Amendments</i>	
● Elimination of licensing requirement.	1999
● Concept of a national oil company introduced. Any new bidder would have to co-operate with national companies to obtain rights over subsoil usage.	1999
● Pre-emptive right of acquisition by state for both new and existing contracts (PSAs).	2004
● Companies required to meet local content benchmarks annually rather than on average over the lifetime of the contract.	2006
● Right of state to amend or annul contracts in cases of substantial change in economic interests and threat to national security.	2007
● Production sharing agreements no longer possible (existing PSAs remained in force).	2008
● "Strategic fields" list approved.	2009
New Law on the Subsoil and Subsoil Use	24 June 2010

Through these amendments and their reaffirmation in the new *Subsoil Law*, the government has the power to amend contracts of "strategic significance" or even to terminate contracts deemed to threaten Kazakhstan's economic security or national interests. Over 100 oil and gas fields are now considered to be of strategic significance, including Tengiz, Kashagan and Karachaganak.

The new *Subsoil Law* also:

- Puts shorter time limits on exploration contracts.
- Enhances the government's ability to terminate contracts not in compliance with the law.
- Requires parliamentary approval for tax stability clauses.
- Reaffirms the state's pre-emptive right to participate in equity transactions, even where agreements assign such rights elsewhere.
- Allows the government to block the sale of oil and gas assets and to exclude specific companies from participating in oil and gas tenders in the interests of national security.
- Lacks explicit provisions for international arbitration (US Department of State, 2011).

In terms of guarantees of stability, Article 30 states that "the subsoil user shall be guaranteed protection of his rights under the laws of the Republic of Kazakhstan. Changes and additions to legislation which adversely affect the results of entrepreneurial activity subsoil contracts do not apply to contracts entered into prior to making these changes and additions. Guarantees established by this Article shall not apply to changes in the legislation of the

Republic of Kazakhstan in the field of national security, defence, in the areas of environmental safety, health, taxation and customs regulation.”

One of the principal concerns with new legislation is that it will provide an opening for the government to cancel or amend contracts based on a lack of investor compliance concerning, *e.g.* tax evasion (including through transfer pricing), and local procurement (including local personnel) and environmental violations. A number of disputes have arisen with existing investors in the three largest oil fields in Kazakhstan, particularly Kashagan which represents the largest oil field discovery in the past 30 years (Box 2.1). Problems have also arisen at Tengiz, an oil field which has been exploited by foreign investors almost since independence and which produces one quarter of the country's total output.

Box 2.1. Major oil fields in Kazakhstan

The Tengiz and Kashagan oil fields account for roughly one half of proven oil reserves and the experience of foreign investors there provides insights into the evolving policy environment for foreign investment in the petroleum sector.

Tengiz¹

Located on the northeastern shore of the Caspian Sea, the Tengiz oil field represents over one quarter of Kazakhstan's oil production. The field poses a number of technical difficulties related to its depth, the high pressure at which the oil emerges and even with the oil itself which contains hydrogen sulphide, a toxic substance which must be removed from the oil and disposed of. The oil field was discovered in 1979 and negotiations with Chevron concluded in 1993, at a time of a severe economic contraction and even before the first Oil and Gas Law was promulgated. In November 2002, a dispute arose concerning plans to finance an expansion of the field out of project revenues which would have eroded the government's tax base (Campaner and Yenikeeff, 2008). The government was also facing some criticism at home that the terms of the original contract had been too favourable to investors. Leading up to this conflict, the government had already levied fines on Chevron for excessive air pollution in 1997 and secured an agreement for the relocation of the plant and for more careful disposal of the chemical by-products. Renegotiations involved *i.a.* environmental improvements and an expansion of output. Chevron initially shut down its operations and then reopened two months later. In 2000, Chevron agreed to additional oil-cleaning facilities and an end to gas flaring and in 2007 was fined USD 609 million for environmental damage from stockpiling hydrogen sulphide since 2003.

Box 2.1. Major oil fields in Kazakhstan (cont.)

Kashagan

The Kashagan oil field is the largest discovery worldwide since the 1970s and is estimated to be the fifth largest field in the world. It was discovered in 1999 under the shallow waters of the North Caspian Sea. Like at Tengiz, the oil has a high sulphide content and is under high pressure. Furthermore, the sea freezes in winter and the area is ecologically fragile as home to both rare Caspian seals and beluga sturgeon. The main difference with Tengiz is in the total estimated cost of exploiting the oil field: USD 136 billion for Kashagan, compared to USD 23 billion for Tengiz. The project was to begin producing in 2005 but is now expected to produce oil by the end of 2012. Lengthy delays and cost overruns estimated at USD 79 billion have led to conflicts between the consortium and the government. Unlike Tengiz which is a joint venture with the government, Kashagan is a production sharing agreement (PSA) based on a model developed at the World Bank which offers the advantage of a higher share of the profits for the state when the venture is successful but also a higher cost to the state in the event of delays (Muttitt, 2007).

In 2007, the government suspended work at Kashagan citing environmental violations together with alleged tax evasion regarding imported equipment (Campaner and Yenikayeff, 2008). In early 2008, an agreement was reached whereby oil companies would pay a one-time bonus of USD 300 million, additional royalties of USD 2.5-4.5 billion when production starts depending on the price of oil at the time and KazMunaiGaz would raise its stake from 8.33% to 16.81% by paying only USD 1.78 billion to the group – generally considered to be below the market price of the stake. Officials were reported to have said that the money would be spent on education, health care and infrastructure.²

1. For a full discussion, see Hosman (2009).

2. Andrew Kramer, "Capitalizing on Oil's Rise, Kazakhstan Expands Stake in Huge Offshore Project", *New York Times*, 15 January 2008.

Telecommunications

The government has been liberalising the telecommunications sector since 2004, replacing the 1999 *Telecommunications Law* with a new law in 2004. The market power of the state-owned incumbent has gradually been reduced in both fixed and mobile telephony but it remains the key provider of services. Foreign investors have entered the sector but have been constrained by equity restrictions which vary between fixed and mobile telephony. As a result, although the market for mobile telephone services is approaching saturation, prices remain above those in other emerging markets.

The *Law on National Security* (1998, Article 22-1) stipulates that foreigners or foreign legal entities may not manage or operate the main communication lines, nor own in the aggregate more than 49% of the shares in an operator of long-distance or international communications which owns land

communication lines. This restriction was to have been lifted by 2008 but remains in force. Furthermore, any acquisition of more than 10% of the shares in any operator of long distance and international communications requires approval from the Information and Communications Agency, although this applies equally to domestic investors.

The government has gradually divested some of its share in KazakhTelecom, the national operator. As part of the privatisation programme in 1997, it sold 40% of the total chartered capital stock (or 44.4% of the voting shares) of the company to Daewoo of South Korea and extracted a commitment from Daewoo to invest USD 1 billion in the company until 2000. In return, the company received exclusive rights to provide long-distance and international telecommunications services for 15 years. Daewoo sold off its share of the company during the Asian financial crisis. By early 2007, the government's share in the company had been reduced to 51%.

In 1996, KazakhTelecom (KT) was issued a 15-year licence to develop, implement and manage the public telecommunications network, as well as exclusivity in providing long distance and international services under the *Natural Monopolies Law* (2001). The exclusive right of KT to provide long distance and international services was cancelled by the *Telecommunications Law* (2004). Licences for the provision of these services are now held by more than 25 operators.

At the same time as the licence was issued to KT, the company committed to provide universal access and to develop rural telephony. Universal access has been funded partly through cross-subsidies, with international calls and business users subsidising local calls and household telephone use. Fixed telephone lines have doubled since 2000, reaching 25 per 100 inhabitants in 2010 – only slightly less than in the Russian Federation or Ukraine and far ahead of the rest of Central Asia.

The fastest growth in demand has been in mobile telephone use, with cellular subscriptions per 100 inhabitants increasing from 1.3 in 2000 to 123.4 subscriptions by 2010. The two largest cellular operators are GSM-Kazakhstan (51% controlled by a Turkish-Finnish-Swedish investor and 49% by KT) and KaR-Tel (a wholly-owned subsidiary of the Russian company Vimpelcom). In 2006, KT acquired stakes in other smaller operators, Mobile Telecom Service (100%, later reduced to 51%) and Altel (50%), and then in 2007, it launched its own mobile service, Neo-Telecom.

In spite of the spectacular growth in demand and the growing interest of foreign investors, the government has proceeded slowly in opening up the sector. The government-controlled incumbent, KazakhTelecom, remains dominant in both fixed and mobile telephony, and two other fixed line operators are also partly state-owned. Furthermore, KT controls all

communications on its own lines and investors have complained about KT's lack of willingness to allow open and equal access to its backbone network to other operators. In the mobile sector operators may not provide international services directly but must connect to KT. Existing cellular operators are also under no obligation to share sites or allow roaming, thus raising barriers to new entrants (Jensen and Tarr, 2007).

There is also as of yet no effective counterpart to the market power of the incumbent operator, with neither an independent regulatory authority nor any fixed-line, sector-specific competition regulation. Under the 1999 *Telecommunications Law*, the Committee on Communications and Information (CCI) under the Ministry of Transport and Communication was given responsibility for sectoral regulation but was neither politically nor financially independent. Following a reorganisation, the responsibility fell to the Agency of Information and Communication under the new Ministry of Communication and Information. The Agency was later abolished as well.

An independent regulator was to have been established by 2006 (HERA-CEEI, 2002) and KT restructured but neither of these occurred. Accession to the WTO will likely involve commitments related to the 49% limit, the exclusivity held by KT and the question of an independent regulator. Foreign investment restrictions also contribute to a high cost sector with adverse consequences for the overall competitiveness of the economy. Non-discriminatory means should be found to address national security concerns.

Finance

Banking

The *Banking Law* dates from 1995 but with significant amendments in 2005 which almost completely opened the sector to foreign investment. The principal restriction remaining for foreign investors in the banking sector concerns branching. Foreign banks may open a representative office with permission of the National Bank of Kazakhstan (NBK) but may not open branch offices.

Prior to the 2005 amendments to the *Banking Law*, the expansion of foreign banks was limited through both equity and operational restrictions. The total registered charter capital of all banks with foreign participation was limited to 50% of the aggregate capital of all banks in Kazakhstan. A foreign bank was defined for these purposes as one with more than one third of its capital held by foreigners. Furthermore, at least one member of the Board of Directors and 70% of all employees were required to be Kazakhstani nationals. Foreign banks were also previously required to operate a representative office for one year before applying to the NBK for permission to open a subsidiary bank.

Given the rapid credit expansion at the time, investors were quick to respond to the greater openness. In 2007, UniCredit Group (Italy) acquired 95% of the shares of the fourth largest local bank for USD 2.2 billion and Kookmin (Korea) took a share in the sixth largest local lender for USD 634 million. These acquisitions were followed in 2008 by the decision by Raiffeisen Bank (Austria) to open a banking subsidiary and by HSBC (UK) to expand its existing operations. Asian and Middle Eastern investors are also reported to be interested in the Kazakhstani banking sector.

The domestic banking sector was strongly affected by the global financial crisis beginning in 2008. SamrukKazyna, the national sovereign wealth fund, poured USD 3.5 billion into the sector by acquiring stakes in four systemically important banks facing liquidity problems, including controlling stakes in BTA Bank and Alliance Bank, both of which had reportedly been seeking strategic partners among potential foreign investors.⁹

Insurance

The insurance sector is governed by the 2000 *Law on Insurance Activities*, as amended. As in banking, branches are not permitted. The sector has gradually been opened to foreign investment, with all restrictions except on branching removed as a result of amendments to the *Insurance Law* in February 2006. Previously, foreign investment in the sector was restricted in a number of ways. Foreign equity limits were set according to the type of insurance, with life insurance limited to 50% and other subsectors (property, health/medical and reinsurance) restricted to 25%. Furthermore, acquisition of more than 5% of the voting shares of an insurance provider by non-residents was subject to approval by the National Bank of Kazakhstan. For companies with foreign participation, at least one third of the board of directors and management were required to be citizens of Kazakhstan.

Other finance

Foreign firms are not allowed in securities dealing and stock brokerage services but are allowed to underwrite new issues, provide risk management services, mergers and acquisitions advice and information services (Jensen and Tarr, 2007).

Other sectors

Agriculture and forestry

According to Article 24 of the *Land Code* (2003), only Kazakhstani legal entities are allowed to own land for commercial agriculture and forest cultivation. Foreigners may obtain 10-year leases for agricultural land and forests.

Media

The *National Security Law* (1998) limits equity stakes in media companies to 20% for foreign natural and legal persons.

Maritime transport

According to the *Shipping Law* (2002), a foreign shipping company wishing to perform maritime services (principally on the Caspian Sea) must establish a local subsidiary and must register its vessels in Kazakhstan. Foreign legal entities operating in the Caspian Sea according to production sharing agreements may, under certain conditions, also fly the national flag. Under the *Shipping Law*, cabotage shall be performed by vessels flying the national flag or the flag of another country subject to authorisation by the government.

Air transport

The foreign share in a company providing domestic and international air transport services is limited to 49%. Furthermore, the nominee for CEO position in an air company must meet job specification requirements, defined by the authorised civil aviation authority.

Public procurement

According to the *Law on Government Procurement*¹⁰ (2007), foreign suppliers are entitled to participate in government procurement tenders for the provision of goods and services, “unless otherwise provided by the Law” (Article 3). The nationality of the enterprise operating in Kazakhstan is not taken into consideration. The main criterion, established by the legislation of Kazakhstan, relates to the percentage of local employment in order to qualify for a conditional price reduction in the tender. The *Law on Public Procurement*¹¹ (2007) stipulates that the price of the domestic producer of goods can conditionally be reduced by 10% and of works and services by 5%. In addition, the conditional price of the tender can be reduced by 0.1% for each percentage of local content. National holding companies, which represent a large share of the economy and public procurements, are not subject to the provisions of the Law, although they are required to fulfil local content requirements.

Measures based on national security considerations

The *National Security Law* (1998) takes a broad definition of national security by encompassing economic security (Article 18) which includes not only preserving and strengthening the resource and energy fundamentals of the economy but also increasing the share of local producers in the economy. The objective of economic security has also arisen in subsequent laws which define strategic branches of the economy as well as strategic objects in the

form of individual enterprises or natural resource projects. The state reserves the pre-emptive right to acquire these strategic objects if they are sold off and has specified a number of firms which are already fully or partially state-owned as excluded from privatisation.

While it is legitimate for countries to protect their essential security interests, it is important that such policies are designed and implemented with the smallest possible impact on investment flows. The *OECD Guidelines for Recipient Country Investment Policies relating to National Security* adopted by the OECD Council in May 2009 provide recommendations for such policies based on the principles of non-discrimination, proportionality, transparency and accountability. The *Guidelines* suggest that governments treat similar investors in the same way, make transparent their regulatory objectives and practices, notably by publishing relevant laws and consulting interested parties when considering legal or regulatory changes. To ensure procedural fairness and predictability, the review or authorisation procedures for foreign investment should be based on clear criteria and specify the modalities, including the documents to be submitted by applicants, the timeframe for replies by relevant authorities and the possible appeal or redress procedures against administrative decisions. Such measures would help reduce the current legal and regulatory uncertainty in Kazakhstan's policies related to strategic sectors and national security considerations.

According to the 2003 *Law On State Monitoring of Ownership in Economic Sectors of Strategic Importance*, the following sectors are considered of strategic importance (see Article 1, paragraph 3):

- production and processing of fuel and energy resources (coal, oil, gas, uranium and metallic ores);
- machine-building;
- space-related activities;
- agro-industrial complex;
- water management;
- chemical industry;
- transport and communications;
- electric power production and distribution;
- items manufactured for military-industrial purposes.

Going beyond the classification of strategic *branches*, the government has also specified hundreds of strategic *objects*, defined as property of social and economic importance for sustainable development, the disposal of which will affect national security. If a strategic object is in private hands and comes up for sale, the state reserves the priority right to buy the strategic object at

market value. A government Resolution from June 2008¹² provides a list of 231 subsoil (deposit) areas of strategic importance and a list of 164 companies in which the state should remain the sole owner (such as Kazpost, the Civil Aviation Academy, Pavlodar airport or the Atyrau oil processing plant) or maintain majority ownership (such as 51% of the shares in Kazakhtelecom).

Public monopolies

According to the *Law on Natural Monopolies*, the 14 activities are currently subject to public monopoly in Kazakhstan, including:

- transport of oil or oil products via trunk pipelines;
- storage, transport of gas or gas condensate via trunk or distribution pipelines, operation of gas distribution plants and related gas distribution pipelines;
- electric power transmission and distribution;
- thermal power production, transmission, distribution and supply;
- technical dispatching of electric power grid output and consumption;
- trunk railway networks;
- access roads;
- air navigation;
- ports, airports;
- telecommunications provided in the absence of a competitive operator due to the technological impossibility or economic inefficiency of such services except for general telecommunication services;
- provision or lease of cable systems and other fixed assets related to the connection of telecommunication networks to the public telecommunication networks;
- water-utilisation and sewer systems;
- postal services.

Other public monopolies include: fishing for sturgeon and purchase, possession or exporting of caviar and other products; inspections related to aviation activities; and activities related to drugs and psychotropic agents.

The list of natural monopolies overlaps very closely with the list of strategic facilities excluded from privatisation (Box 2.2). The natural monopolies list is made available by Kazakhstan's Agency for Natural Monopolies (see www.arem.gov.kz/sem.aspx?type=info). The 2011 government programme for new legislative acts foresees the preparation of a new law amending the current legislation on natural monopolies. There are no private monopolies in Kazakhstan, and the term "private monopoly" is not provided

for in Kazakhstan’s legislation. A draft law “On Amendments to Some Legislative Acts of the Republic of Kazakhstan on the Issues of State Monopoly” is under development and will review activities related to a state monopoly.

Privatisation process

The *Civil Code*, the *Law “On Privatisation”*, adopted on 23 December 1995, and Regulations on the Rules for Selling Privatisation Objects, approved in June 2000, are the main legal acts regulating the privatisation process in Kazakhstan. The 1995 *Privatisation Law* states that state property can be sold to individuals, non-governmental legal entities and foreign legal entities (Articles 1 and 2) and does not contain any specific provisions regarding the sale of state property to foreign entities. The only exceptions concern the privatisation of state-owned enterprises, which are natural monopolies or are considered of strategic importance and as such are included in the list of strategically important facilities, which has to be approved by the government (Box 2.2). According to the *Civil Code* (Article 193-1), existing restrictions on privatisation of strategic facilities apply in a non-discriminatory manner to both residents and non-residents.

Box 2.2. Strategic facilities excluded from privatisation

According to Article 193-1 of the *Civil Code*, strategic facilities are those of social and economic importance for the country’s sustainable development, the use or disposal of which would affect national security. The following sectors/facilities shall not be subject to privatisation:

- trunk railway networks; trunk oil pipelines;
- trunk gas pipelines;
- national electrical grid;
- trunk communication line;
- national postal network;
- international airports;
- internationally important sea ports;
- air navigation devices of the air traffic control system;
- navigation devices regulating and ensuring the safety of maritime traffic;
- nuclear energy facilities;
- facilities of the space industry;
- water facilities;

Box 2.2. **Strategic facilities excluded from privatisation** (cont.)

- motor roads for public use;
- shareholdings (participatory interest, shares) in legal entities owning strategic objects;
- shareholdings (participatory interest, shares) of individuals and legal entities having the possibility to determine or influence, directly or indirectly, the decisions of legal entities owning strategic objects.

The restrictions concern the subsoil, water, flora, fauna and natural sources which remain state-owned (*Civil Code*, Article 193). Private ownership of land is authorised but subject to specific legislation. In addition, land occupied by the state natural reserve fund,¹³ state cultural organisations,¹⁴ state-owned facilities serving defence needs¹⁵ and listed state education institutions¹⁶ should also remain state-owned and cannot be privatised.

The list of state-owned facilities excluded from privatisation is provided by Presidential Decree No. 422 (28 July 2000) and the Resolution of the government No. 1587 (24 October 2000).

During the period 1991-2006, more than 39 000 state-owned enterprises were privatised with total proceeds amounting to KZT 347 billion, of which KZT 68 billion was transferred to the National Fund of the Republic of Kazakhstan (Box 2.3). In 2010 the budget revenues from privatising state-owned enterprises reached KZT 886 million, resulting notably from the following privatisation deals:

- Sales of state property to government institutions financed from the national budget (KZT 186 million).
- Sales of participatory interest and shares in state-owned legal entities (KZT 293 million).
- Sales of state institutions, state-owned enterprises and other state property (KZT 407 million).

Box 2.3. **Kazakhstan's sovereign wealth fund: Samruk-Kazyna**

The main mission of the Fund founded in October 2008 is to enhance the competitiveness, diversification and sustainability of the national economy. Its participation in state companies represents some 65% of the whole economy as it manages shares of more than 400 companies, most of which are wholly state-owned (notably in the energy sector), whereas in some others the state has a controlling stake (i.e. the national air company Air Astana or in Kazakhtelekom) or only a minority share. In 2008, Samruk-Kazyna acquired stakes in several banks facing liquidity problems. The

Box 2.3. Kazakhstan's sovereign wealth fund: Samruk-Kazyna (cont.)

company continues to be the largest investor in Kazakhstan. A new law defining the company's rights and obligations is currently under consideration and was expected to be adopted before the end of 2011.

According to government plans, shares of several state-owned companies currently owned and managed by Samruk-Kazyna should be sold to Kazakhstani citizens in the so-called "people's initial public offering" that would take place on the Kazakhstan Stock Exchange (KASE). Only Kazakhstani citizens would be allowed to participate and entitled to purchase 50 shares by person; Kazakhstani pension funds will be authorised to buy shares unsold to individual citizens. The first IPO operations should concern Samruk-Energo, the umbrella company for the state's power generation assets and Kazakhstan's Electricity Grid Operating Company. Shares of other energy companies and of state-controlled banks, such as BTA Bank, could be offered in the second stage of the "people's IPO".

Source: Samruk-Kazyna www.samruk-kazyna.kz; Economist Intelligence Unit, *Country Report Kazakhstan*, April 2011.

A new law under consideration by the Parliament and the Senate foresees codifying current provisions of the 1995 *Privatisation Law* and the *Law on State Enterprises* into a single law so that the same rules apply.

OECD FDI Regulatory Restrictiveness Index for Kazakhstan

The OECD *FDI Regulatory Restrictiveness Index (FDI Index)* seeks to gauge the restrictiveness of a country's FDI rules (see Box 2.4). The Index is currently available for 34 OECD countries, 9 countries adhering to the *OECD Declaration on International Investment and Multinational Enterprises* and a number of other countries, including China, Indonesia, the Russian Federation and Ukraine. It is used on a stand-alone basis to assess the restrictiveness of FDI policies in reviews of candidates for OECD accession and in *OECD Investment Policy Reviews*, including reviews of new adherent countries to the *OECD Declaration*.

The *FDI Index* does not provide a full measure of a country's investment climate as it does not score the actual implementation of formal restrictions and does not take into account other aspects of the investment regulatory framework, such as the extent of state ownership, and other institutional and informal restrictions which may also impinge on the FDI climate. Nonetheless, FDI rules are a critical determinant of a country's attractiveness to foreign investors and the *FDI index*, used in combination with other indicators measuring various aspects of the FDI climate, contributes to assessing countries' international investment policies and to explaining variations among countries in attracting FDI.

Box 2.4. Calculating the FDI Regulatory Restrictiveness Index

The OECD *FDI Regulatory Restrictiveness Index* covers 22 sectors, including agriculture, mining, electricity, manufacturing and main services (transports, construction, distribution, communications, real estate, financial and professional services).

For each sector, the scoring is based on the following elements:

1. the level of foreign equity ownership permitted;
2. the screening and approval procedures applied to inward foreign direct investment;
3. restrictions on key foreign personnel; and
4. other restrictions such as on land ownership, corporate organisation (e.g. branching).

Restrictions are evaluated on a 0 (open) to 1 (closed) scale. The overall restrictiveness index is a weighted average of individual sectoral scores.

The measures taken into account by the index are limited to statutory regulatory restrictions on FDI, such as those reflected in the countries' lists of exceptions to the National Treatment instrument (Annex A) and measures notified for transparency (Annex B), without assessing their actual enforcement. The discriminatory nature of measures, i.e. when they apply to foreign investors only, is the central criterion for scoring a measure. State ownership and state monopolies, to the extent they are not discriminatory towards foreigners, are not scored.

For the latest scores, see www.oecd.org/investment/index and for a discussion of the methodology: *OECD Working Paper on International Investment No. 2010/3 OECD's FDI Restrictiveness Index: 2010 Update* available at www.oecd.org/dataoecd/32/19/45563285.pdf.

With a total score of 0.137, Kazakhstan ranks 12th out of the 51 countries included in the *FDI Index* in terms of regulatory restrictions on FDI (Figure 2.1). The score is 1.7 times the OECD average, with more statutory restrictions on FDI than Ukraine but fewer than in the Russian Federation. Kazakhstan's score reflects a mix of both horizontal and sectoral measures. Measures affecting all sectors include foreign staff restrictions involving key personnel. Sectoral restrictions mostly involve limits on foreign equity ownership in air transport, media, telecommunications and certain financial activities. Certain sectors also face operational restrictions in areas such as branching.

By sector, Kazakhstan is more restrictive than the average for OECD countries in most of the principal sectors with a few exceptions (Figure 2.2). Kazakhstan is also more restrictive than either the Russian Federation or Ukraine in a number of sectors, notably media and telecommunications and agriculture and forestry. It nevertheless performs slightly better than either the Russian Federation or Ukraine in the Index in manufacturing, distribution, business services and real estate. The low score for Kazakhstan in electricity

Figure 2.1. **FDI Regulatory Restrictiveness Index score by country**

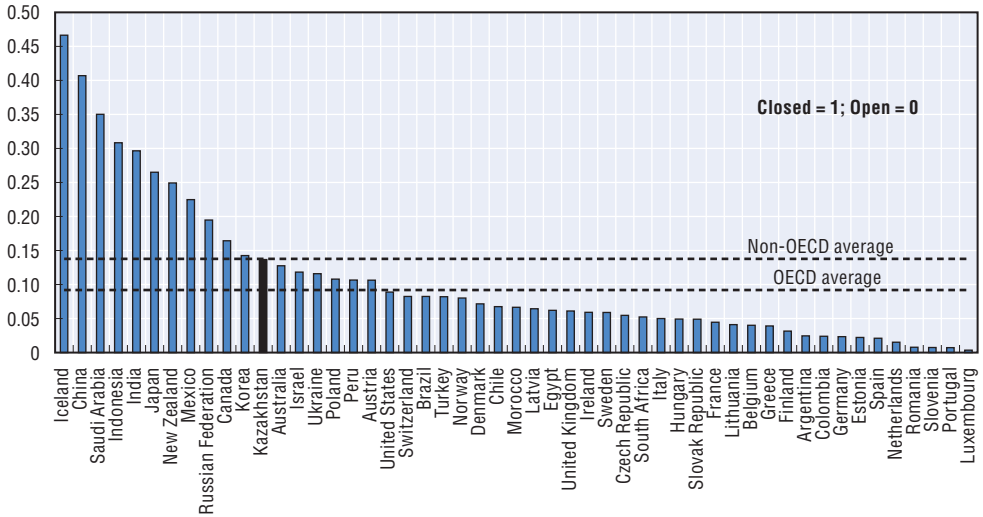
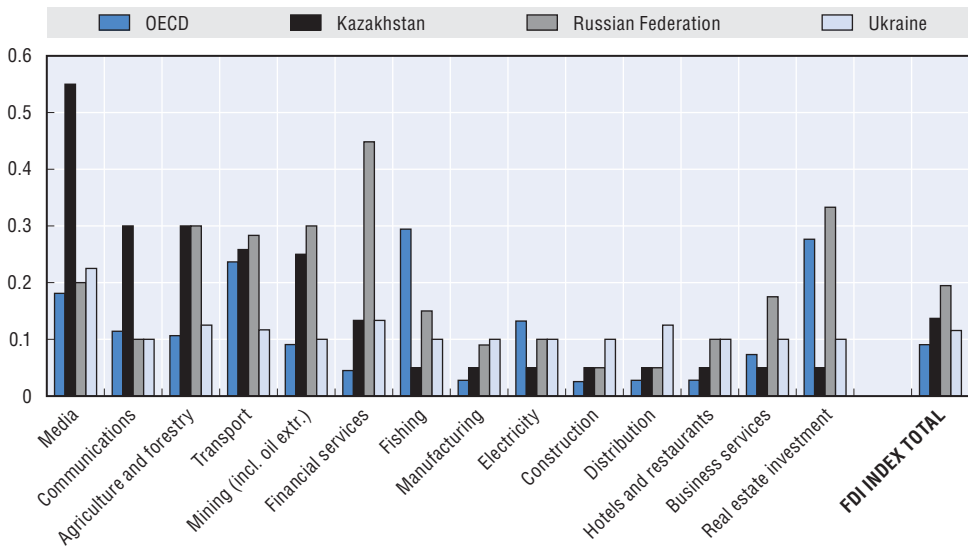


Figure 2.2. **FDI Regulatory Restrictiveness Index score by sector**

0 = open; 1 = closed



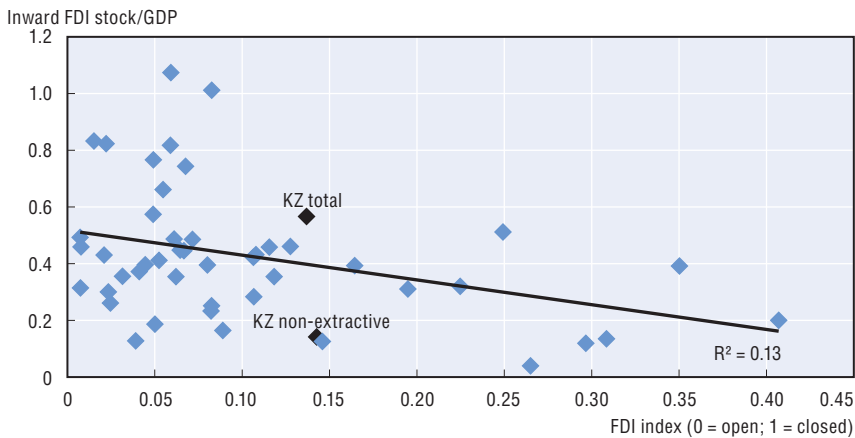
relates to the state monopoly in this sector. State ownership is not factored into the FDI Index but clearly acts as a deterrent on FDI.

The FDI Regulatory Restrictiveness Index does not cover many aspects of the regulatory framework, such as the nature of corporate governance, the extent

of state ownership, and institutional or informal restrictions which may also impinge on the investment climate. For these reasons, a full understanding of global FDI patterns can only come through an examination of all relevant factors. It is nevertheless instructive to test the explanatory power of the *FDI Index* on its own. Figure 2.3 shows the relationship between the scores for each country relative to the stock of inward FDI (relative to GDP). Although countries with the same level of openness sometimes have vastly different levels of inward investment, there is nevertheless a tendency for more open countries, as measured by the Index, to receive more FDI. Many data points are nevertheless grouped in the bottom left corner of the figure – where countries have both low scores on the Index and low levels of inward FDI relative to GDP.

Total FDI inflows into Kazakhstan normalised by GDP are significantly more than could be expected given the relative degree of openness towards FDI in Kazakhstan (Figure 2.3). Much of this can be explained by the fact that more than two thirds of this investment is in the raw materials sector where investors are, within certain bounds, often more willing to put up with a difficult policy environment. If the same comparison is made between FDI regulatory restrictiveness and an estimate of the inward stock of FDI in non-extractive sectors, Kazakhstan receives less inward investment than might be expected given its relative openness.

Figure 2.3. **FDI restrictiveness and FDI performance**



Notes

1. Certain sources nevertheless report that major foreign investment proposals are screened at the highest level (US Department of State [2008] and UNESCAP [2003, p. 32]), but this practice, to the extent it exists, does not appear to have any legal

basis and there is no evidence of a project being rejected under any *ad hoc* screening of this type.

2. Dun and Bradstreet (2005), p. 46.
3. US Commercial Service (www.buyusa.gov).
4. Kaeva and Zhotaev (2010), p. 40.
5. www.inform.kz/eng/article/2385003.
6. “Investors and the State: Kazakh Content”, InvestKZ.com, 2008.
7. The full title is *Rules On Determining the Quota, Conditions and Procedures for Issuing Permits to Employers to Bring Foreign Labour to the Republic of Kazakhstan*.
8. If the duration of a business trip to other territorial units exceeds 60 calendar days, the employer should obtain a new permit for these territories.
9. <http://silkroadintelligence.com/2008/07/25/foreign-banks-drive-ma-activity-in-kazakhstan/>.
10. Law No. 303 On Government Procurement (21 July 2007); Resolution of the Government No. 1310 on Procurement Rules (27 December 2007).
11. Government Resolution No. 1301 “On Rules for Holding of Public Procurement” of 27 December 2007.
12. Resolution No. 651 (30 June 2008) “On approval of the lists of strategic objects transferred into the authorised capital of and (or) owned by national holdings and (or) national companies or their affiliates, as well as other legal entities with state participation, and strategic objects owned by legal entities non-affiliated to the state, as well as by individuals”.
13. Law “On Specially Protected Natural Areas”, Article 23, paragraph 1.
14. Law “On Culture”, Article 21, paragraph 3.
15. Law “On Defence and Armed Forces”, Article 15, paragraph 1.
16. Resolution of the Government No. 1021 (6 July 2000) “On Approval of the List of State Education Institutions Not Subject to Privatisation”.

Bibliography

- Baker and McKenzie (2011), *Doing Business in Kazakhstan*.
- Campaner, Nadia and Shamil Yenikeyeff (2008), *The Kashagan Field: A Test Case for Kazakhstan’s Governance of Its Oil and Gas Sector*, Note de l’IFRI, Paris, October.
- Dun and Bradstreet (2005), *Country Report: Kazakhstan*, June.
- HERA-CEEI (2002), *Telecoms Market Access Study – Kazakhstan*, August.
- Hindley, Brian (2008), *Kazakhstan and the World Economy: An assessment of Kazakhstan’s trade policy and pending accession to the WTO*, Jan Tumlrir Policy Essays, ECIPE, Brussels, March.
- Hosman, Laura (2009), “Dynamic bargaining and the prospects for learning in the petroleum industry: The case of Kazakhstan”, *Perspectives on Global Development and Technology* (8).

- Jensen Jesper and David Tarr (2007), *The Impact of Kazakhstan Accession to the World Trade Organization: A Quantitative Assessment*, World Bank Policy Research Working Paper No. 4142, March.
- Kaeva, Elena and Zhan Zhotaev (2010), "Recent developments in subsurface taxation", *Investors' Voice* (41), American Chamber of Commerce in Kazakhstan, Almaty.
- Kennedy, Ryan and Adilzhan Nurmakov (2007), "Resource nationalism trends in Kazakhstan, 2004-2009", *Working Paper*, RussCasp, March.
- Mack, Kenneth (2006), "Protection of the oil and gas investor's rights in Kazakhstan", *International Energy Law and Taxation Review*, March.
- Muttitt, Greg (2007), "Multinational companies and the contract dispute over Kashagan, the world's largest undeveloped oilfield", Platform (UK), December.
- OECD (1998), *Investment Guide for Kazakhstan*.
- Ospanova, Saule (2010), "Local content policy: Kazakhstan Review", British Embassy, Astana.
- UNESCAP (2003), *Investment Climate in Kazakhstan: Country Report*.
- US Department of State (various years), *Investment Climate Statement – Kazakhstan*.
- US Special Trade Representative – USTR (various years), *Foreign Trade Barriers*.

Chapter 3

Kazakhstan's Policy Framework for Investment

Based on the OECD Policy Framework for Investment, which helps to evaluate various policies relevant for a country's investment climate, Kazakhstan has deployed significant efforts to improve its investment environment. Recent initiatives have focused on reducing administrative burdens for small and medium-sized enterprises, including simplifying registration procedures and reducing minimum capital requirements. But performance is not yet satisfactory in areas such as public consultation. Corruption also remains a serious challenge, and investors still complain about inadequate enforcement of intellectual property rights protection although an adequate legal framework is now in place. Investment promotion and facilitation are a priority for the government but could be further streamlined. Kazakhstan's pending accession to the WTO will be an important step in enhancing the transparency and predictability of the country's trade policy. The entry into force of the Customs Union between Belarus, Kazakhstan and the Russian Federation means gradual harmonisation in the business environment in the CU area which might lead to some reallocation of economic activities among the member countries.

Introduction

The legal regime faced by foreign investors, both when they first establish and in their on-going operations, is only one part of the overall investment environment. An investor must interact with the host government on many different levels and in many different ways, as well as with business partners and competitors – including state-owned enterprises – in the host country and abroad. The investor also confronts expectations about its behaviour both locally by workers and consumers and internationally by civil society and the government in its home country.

The objective of the *Policy Framework for Investment* (PFI) is to explore these various policy domains which influence a country's investment climate (see Box 3.1) and to analyse their contribution, interaction and coherence in support of a sound investment environment. The PFI focuses on what governments can do in each policy area to increase both domestic and foreign investment. Based on selected areas of the PFI, this chapter focuses on a range of policies shaping Kazakhstan's investment environment, particularly investment policy transparency and predictability, investment promotion and facilitation and trade policy. It also highlights some aspects of other policy areas covered by the PFI such as competition policy and infrastructure development. Policies promoting responsible business conduct in Kazakhstan are examined in the next chapter.

Box 3.1. **The Policy Framework for Investment**

The *Policy Framework for Investment* (PFI) helps governments to mobilise private investment that supports steady economic growth and sustainable development, thus contributing to the prosperity of countries and their citizens and to the fight against poverty. The *Framework* was developed at the OECD by representatives of 60 OECD and non-OECD governments in association with business, labour, civil society and other international organisations and endorsed by OECD ministers. It offers a list of key questions that should be examined by any government seeking to create a favourable investment climate.

The *Framework* is a flexible instrument that allows countries to evaluate their progress and to identify priorities for action in ten policy areas: i) investment,

Box 3.1. The Policy Framework for Investment (cont.)

ii) investment promotion and facilitation, iii) trade, iv) competition, v) tax, vi) corporate governance, vii) promoting responsible business conduct, viii) human resource development, ix) infrastructure and financial sector development, and x) public governance. Three principles apply throughout the *Framework*: policy coherence, transparency in policy formulation and implementation, and regular evaluation of the impact of existing and proposed policies.

By encouraging a structured process for formulating and implementing policies at all levels of government, the *Framework* can be used in various ways and for various purposes by different constituencies, including for self-evaluation and reform design by governments and for peer reviews in regional or multilateral discussions.

For more information on the *Policy Framework for Investment* and its User's Toolkit, see: www.oecd.org/daf/investment/pfi and www.oecd.org/investment/pfitoolkit.

Investment policy

The quality of investment policies directly influences the decisions of all investors, be they small or large, domestic or foreign. Transparency, property protection and non-discrimination are investment policy principles that underpin efforts to create a sound investment environment for all.

Access to information and public consultations

The Centre of Legal Information of the Republic of Kazakhstan, created in 2006, maintains the State Register of all legal acts and an electronic database of laws (<http://rkao.kz/zan>) both for official use and for access by businesses and individuals. For a fee, it can provide the text of laws in Russian or Kazakh. There is no such database of legal texts available in English.

The Institute of Legislation of the Republic of Kazakhstan provides legal support to the government to ensure the high quality of laws adopted in the country and to enhance stakeholder participation in developing new legislation. The Institute established in 1993 saw its role reinforced in 2010. It helps both in designing and drafting new laws, consults with legal experts and practitioners in specialised working groups and organises conferences and roundtables, including with international participation. For example, the Institute organised in June 2011 discussions on the new law under preparation

on improvements to criminal procedure legislation with members of the Parliament and the Senate, relevant ministries and state agencies (the National Security Committee, Financial Police, General Prosecutor's Office) and representatives of business.

On its website (www.minjust.kz), the Ministry of Justice maintains a publicly available database ("prospective legislation"), which contains draft laws and those under preparation and provides updated information on successive steps: from drafting, to the review process by relevant state bodies (such as the government, presidential administration and the Parliament) up to the final stage of signing by the President. Since the beginning of 2011, the public has a possibility to post comments on draft laws in this database. In practice, experience with public consultations is mixed. The US State Department (2011) reports that opportunities for public consultations are available but limited in practice, while business association comments suggest that the experience with public consultation has been varied, with good procedures for public consultation for some legislation such as the new *Tax Code* and very little opportunity for comment in some other cases. A recent survey of investors by Ernst and Young (2010) reports that, while notable progress has been achieved in public consultation, "there are cases when only a fraction of stakeholders are invited to participate in public discussion, or draft law or regulation is provided to stakeholders for input and comments just before it is sent to parliament" (Ernst and Young, 2010). Local NGOs consider that public consultations are often *pro forma* and involve a limited number of partners, with SMEs notably absent.

Regulatory and procedural transparency

The government has made administrative simplification and an improvement in international competitiveness and in its *Doing Business* rankings a high political priority.¹ Following the President's Address to the Nation in 2008, the government initiated regulatory reform to reduce the administrative burden on business and to simplify the registration and permit systems, as well as licensing, certification and accreditation procedures. The 2007 *Licensing Law* reduced the number of licensed activities from more than 400 to 100 and requires that licensing requirements for any new activity should be established by law.

State registration was streamlined in 2010² to facilitate the establishment and operations of small and medium-sized enterprises³ through the following measures:

- Simplified registration for small enterprises and for legal entities carrying out their activities on the basis of the model charter; branches and

representative offices should be registered in not more than one working day.

- The minimum capital requirement for limited liability companies was reduced to roughly USD 1000 and for small enterprises set at only KZT 100.
- The obligation for small businesses to submit notarised constituent documents was abolished.

Licensing procedures still concern an important number of activities. There are three types of licensing in Kazakhstan: i) general licences for certain types of activities; ii) single licences for certain business transactions, and iii) specific operational licences to carry out certain operations in banking and insurance. Although licensing procedures apply to all operators irrespective of their nationality, the number of procedures (currently 7) and of activities concerned (currently 37) remains important. Current licensing procedures cover sectors, which are often subject to licensing procedures in many other countries (such as activities related to trade with narcotics, production and distribution of ethyl alcohol and alcohol products, space launching, gambling and lottery or tobacco industry) and several categories of business services (legal, architecture, audit) and other services (financial, insurance, education, TV and radio broadcasting). However, licensing of several other activities is less frequent in other countries, for example construction, grain storage and export, tourism and sport services. Operating without appropriate licensing or after the licence has expired may imply administrative and criminal responsibility leading to confiscation of the company's assets.

The objective of the e-government programme initiated in 2005 has been to accelerate administrative procedures and reduce their costs for both business and government. Several specific modules are already operational, including “e-licensing” and “electronic state purchases” and several others such as a regional “electronic *akimat*” system and an “e-notariate” (uniform notarial information system) are under development.

The government has intensified its efforts to reduce the number of registration procedures from 8 in 2008 to 6 in 2011 and the time required to perform them from 21 to 19 days. As a result, Kazakhstan's ranking in the World Bank 2012 *Doing Business* report under the “starting a business” indicator improved from the 85th to 47th position in 2010 out of 183 countries, helping to make Kazakhstan the leading reformer of its business climate in 2010 (World Bank, 2010a).⁴ The country's performance for “starting business” in an international perspective has, however, deteriorated in 2011 (World Bank, 2011).

A new draft law to improve the permit system was adopted by Parliament and should be signed by the President in the near future. It aims to eliminate conflicting requirements from various sectoral laws and to limit the types of

permits and licences. The law should increase transparency in permit and licensing procedures and reduce considerably their costs and time for business. The draft law specifies the list of required documents and relevant procedures and defines clearly the rights and obligations of the authorities, including the mandatory timeframe for replying to applicants (15 working days in general; 30 working days for activities involving nuclear energy and financial services) and the obligation for responsible agencies to justify any refusal in a detailed written response. In the absence of a reply by licensing authorities in the established timeframe, the licence is considered to be granted.

Recent administrative changes have already improved the procedures for establishing a business in Kazakhstan. A 2001 Foreign Investment Advisory Service (FIAS) survey reported that 73% of investors were dissatisfied with the business environment, largely because of bureaucratic red tape. FIAS estimated that 23% of management time was taken up with dealing with government regulations and administrative requirements, compared to only 4% in Latin America (FIAS, 2001). In contrast, a decade later, an Ernst and Young (2010) survey found that only one in ten investors mentioned strict regulations, licences or approvals to practice business as one of the top three obstacles to investing in Kazakhstan. The government remains committed to further facilitating business procedures and enhancing their implementation, especially at the regional level and for small and medium-sized enterprises.

Land and property registration

Under the Constitution, there is a presumption that land belongs to the state, a principle which is reiterated in both the *Civil Code* (Article 193) and the *Land Code* (2003). Legislation has nevertheless increasingly moved towards full private ownership rights, not least the *Land Code* itself which states that land may be privately owned, including by foreigners, if land plots are developed for commercial or residential purposes.⁵ According to Article 6 (paragraph 6), foreigners, stateless persons and foreign legal persons shall enjoy the same rights and obligations concerning land as citizens and legal persons of the Republic of Kazakhstan, unless otherwise provided by the *Land Code* or other laws.

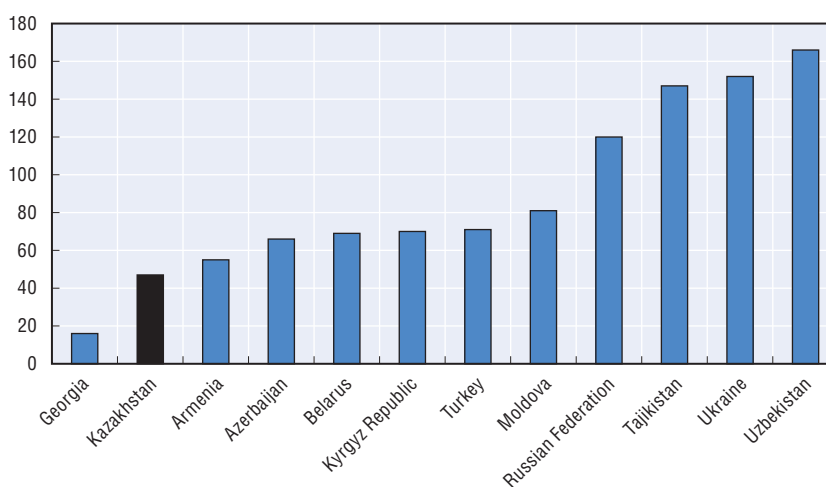
For state registration of immovable property, foreign legal entities have to submit a legal statement from the trade register or other legal document to prove their legal status under the laws of the foreign state, together with a notarised translation in both Kazakh and Russian. The time required for state registration of immovable property rights has recently been shortened from 15 to 5 working days after receipt of the application by the registering body.⁶ The introduction of electronic information services implemented jointly by the Ministry of Justice and the Ministry of Communication and Information

has further reduced the time necessary for property registration. In line with the objectives of the “Business Road Map 2020” programme, registration of real estate pledge agreements has been reduced to three working days and could be as short as one day in some cases. In parallel, fees for urgent registration of rights for private and commercial building were also reduced.

As a result of these efforts, Kazakhstan performs well in registering property (ranking 29 out of 183 economies) among the 10 indicators covered by *Doing Business*. At the same time, the procedures in a related area – dealing with construction permits – are still too numerous (32) and time consuming (189 days), resulting in the country’s mediocre ranking for this indicator (147 out of 183 economies) (World Bank, 2011). The successful experience carried out in Almaty shows that considerable improvements in this area are possible: the establishment of a one-stop shop for technical requirements for utilities and the merger of all technical requirements into one procedure for an Architectural Planning Assignment have allowed a significant reduction in the number and costs of construction permit procedures (American Chamber of Commerce, 2011a).

Figure 3.1 compares Kazakhstan’s performance under *Doing Business* with that of former Soviet republics and other peers. Kazakhstan currently ranks 47th in terms of the overall ease of doing business, ahead of both the Russian Federation and Belarus. Considerable efforts and political will have been devoted to improving the *Doing Business* rankings in Kazakhstan, with notable success: Kazakhstan was the biggest reformer in terms of the overall ease of doing business in 2010. Kazakhstan does particularly well in terms of paying taxes and

Figure 3.1. **Ease of Doing Business rankings in selected countries**

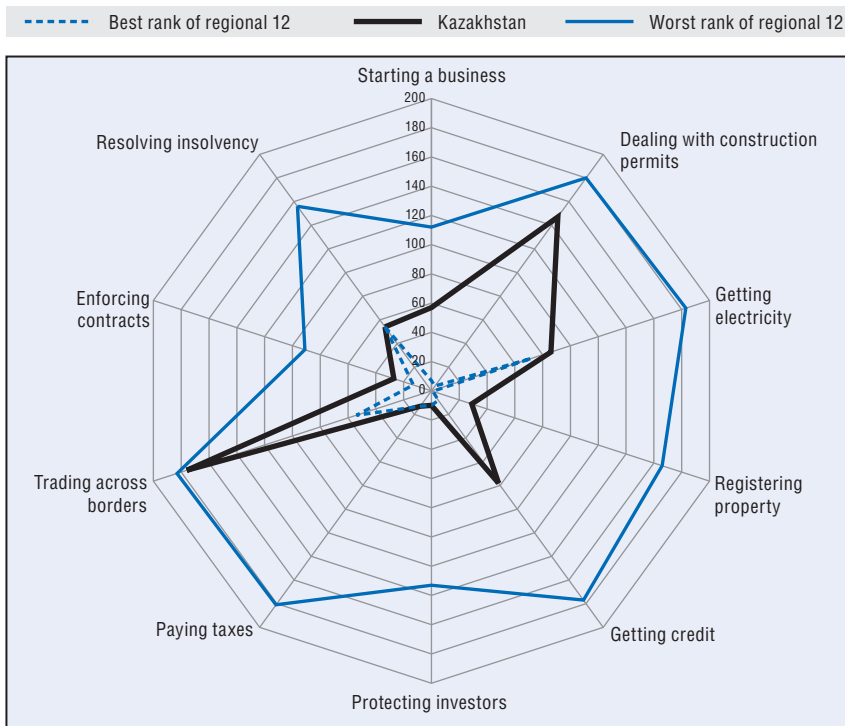


Source: World Bank, *Doing Business* 2012.

closing a business and relatively well in many other areas (Figure 3.2). It is particularly weak in both a regional and global comparison in terms of dealing with construction permits and trading across borders.

The removal of red tape and superfluous regulations is likely to benefit all firms, particularly small and medium-sized ones. But making a good investment climate requires more than removing bureaucratic impediments. For this reason, an improvement in the *Doing Business* rankings does not necessarily translate into greater inflows of FDI or a more diversified sectoral distribution of that investment. Even in terms of bureaucratic impediments, some survey evidence is at odds with the improvement in Kazakhstan's ranking under *Doing Business*. A survey of actual and potential investors by Ernst and Young (2010), for example, finds that one in six firms surveyed mentioned the complexity of administrative procedures as an obstacle to (further) investment. Overall, respondents felt that the bureaucratic burden had increased over time. Surveys of enterprises by the World Bank (2009) also point to persistent difficulties in starting a business. One quarter of firms

Figure 3.2. **Kazakhstan's business climate in a regional context**
 Ranking by measure, 183 countries



Source: World Bank, *Doing Business* 2012.

surveyed reported that obtaining permits and licences was a major constraint on their business, compared to only 15.8% of firms in the rest of Central Asia and Eastern Europe.

These discrepancies are a useful reminder that the cost of doing business is more than just the number of procedures and the time involved in obtaining permits. The investment climate also depends *inter alia* on the level of transparency, consistency in implementation of existing rules and proportionality in the sanctions for non-compliance or non-conformity. In these areas, there is substantial room for improvement.

Protecting and enforcing intellectual property rights

Has the government implemented laws and regulations for the protection of intellectual property rights and an effective enforcement mechanism?

The main legal texts protecting intellectual property rights in Kazakhstan are: the Constitution of the Republic of Kazakhstan; the *General Part of the Civil Code* (27 December 1994); the *Special Part of the Civil Code* (1 July 1999), the *Criminal Code* (16 July 1997); the *Code on Administrative Offences* (21 January 2001) and the *Customs Code* (30 June 2010). Kazakhstan has also adopted a number of special laws, including: *On Copyrights and Related Rights* (10 June 1996), *On Protection of Consumer Rights* (5 June 1991); the *Patent Law* (16 July 1999), *On Trademarks, Service Marks and Appellations of Origin of Goods* (26 July 1999); *On Protection of Selective Achievements* (13 July 1999); *On Legal Protection of Topologies of Integrated Circuits* (29 June 2001); and *On Justice Authorities* (18 March 2002). Amendments to the Patent Law adopted in May 2011 simplify the requirements for application and issuance of patents.

Many of Kazakhstan's laws related to intellectual property rights take into account relevant international requirements such as the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement negotiated in 1994. For example, they provide for the civil and legal responsibility for infringements of the rights of owners of trademarks as well as for criminal liability for illegal use of protected trade marks (WTO, 2000). To comply with international requirements and adjust its legislation to reflect rapid technological changes affecting intellectual property rights (IPRs), Kazakhstan has acceded to the WIPO Internet Treaties and implemented related requirements in its national legislation.

The Intellectual Property Rights Committee under the Ministry of Justice is the main body responsible for implementing state policy in this area and for controlling and enforcing intellectual property rights and developing the

uniform patent system. The National Intellectual Property Institute, an expert organisation subordinate to the Committee, is in charge of the areas subject to state monopoly, including service delivery in the field of protection of inventions, industrial designs, trademarks and appellations of origin of goods. Several other law enforcement bodies take part in IPR protection within their areas of competence, notably the Financial Police (for criminal proceedings) and customs bodies (in the case of trade in counterfeit goods).

The amendments to the *Administrative Violation Code* and the *Criminal Code* adopted in 2005 have made it easier to prosecute IPR infringements and have added more severe penalties for violations. As a result, Kazakhstan has been removed from the USTR's Special Priority 301 Watch List (US Department of State, 2006).

Efficient IPR enforcement depends on administrative capacities and specialised expertise in the judicial system. In recent years, the authorities have intensified their efforts to implement existing provisions on IPR protection. Local justice departments performed 993 inspections concerning IPR cases in 2010 (compared to 711 in 2009), which led to 442 administrative proceedings (456 in 2009), mainly pursuant to Article 129 of the *Administrative Offence Code* related to copyright and related rights violation. In 2010, the courts reviewed 385 cases and imposed fines amounting to more than KZT 8 million (compared to over KZT 5 million in 2009). In parallel, 1 644 offences in the field of intellectual property were detected in 2010, leading to 563 criminal proceedings. Following two special preventive investigation actions, 114 000 products were withdrawn, notably pirated CD-DVD disks. The Financial Police detected 618 crimes in 2010 of which 520 were sent to courts. Whereas these measures are useful to combat counterfeit domestic production, they have remained relatively inefficient to address the main problem, namely massive imports of counterfeit goods to Kazakhstan from abroad.

It is therefore essential that IPR protection be addressed at the Customs Union (CU) level. Intellectual property matters are regulated by Chapter 46 of the Customs Code of the CU. In accordance with these provisions, Kazakhstan adopted a number of new normative legal acts relevant for IPR protection which set up the conditions and modalities of co-operation among the CU in the area of IPR protection, including the establishment of the CU Unified Register of Intellectual Property.⁷ To facilitate co-ordination, exchange of information and technical co-operation in this area, the CU members will establish the Coordinating Council for Intellectual Property. The Agreement on Common Principles of Regulation in Safeguarding and Protection of Intellectual Property Rights came into force in January 2012. It introduces a principle of regional exhaustion for trademarks and should improve efficiency of legal safeguards and protection. Moreover, recent amendments to

Kazakhstan's Customs Code authorise customs officials to act on their own initiative and to suspend clearance of goods not included in the Customs Register.

Kazakhstan is member of both the World Intellectual Property Organization (WIPO) and the Eurasian Patent Organization (EAPO) and is a party to the main international conventions and treaties related to intellectual property rights. Most recently, Kazakhstan ratified the Protocol to the Madrid Arrangement on International Registration of Trademarks (see Annex D). Preparations are underway for permitting Kazakhstan to join other international treaties, including the Singapore Trademark Law Treaty and the International Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organisations.

Investment promotion and protection agreements

Are investment authorities working with their counterparts in other economies to expand international treaties on the promotion and protection of investment? Has the government reviewed existing international treaties and commitments periodically to determine whether their provisions create a more attractive environment for investment?

Kazakhstan has signed agreements on mutual protection and promotion of investments with 45 countries (of which 18 with OECD member countries); 29 are currently in force. Of the 16 awaiting ratification, two involve a country that already has an earlier agreement with Kazakhstan. In addition, a Treaty with the Eurasian Economic Community (including Belarus, the Kyrgyz Republic, the Russian Federation and Tajikistan) also provides for guarantees of investor protection, including non-discrimination, compensation for expropriation and access to international arbitration for investment disputes in the absence of an arbitration agreement (see Annex C).

Kazakhstan has not developed a model treaty on investment protection and promotion and negotiations with different countries are therefore carried out on the case-by-case basis. The government considers these treaties an important tool for encouraging foreign investment and seeks during current negotiations to improve various provisions to reduce the risks of new international disputes relating to investment. Most existing treaties signed by Kazakhstan include similar provisions and refer to the following notions and obligations:

- Broad definition of investment, including investments made directly or indirectly through subsidiaries, and assets, claims and rights that constitute investment, including tangible and intangible property.

- Investments of nationals and companies of both Parties receive in the territory of the other Party the better of national treatment or most-favoured-nation treatment.
- Expropriation can occur only in accordance with international law standards; for a public purpose; in a non-discriminatory manner and upon payment of prompt, adequate and effective compensation.
- Investors are guaranteed the unrestricted transfer of funds in a freely convertible currency.

Several BITs stipulate that neither Party may impose performance requirements such as those conditioning investment on exports of goods produced or the local purchase of goods and services. However, as already mentioned, several other laws impose local content requirements, notably the 1999 *Oil and Gas Law*, the 2010 *Law on Subsoil and Subsoil Use* and the now-expired 2005 *Law on Production Sharing Agreements*.

For dispute settlement, the majority of treaties signed by Kazakhstan foresee that the investor may make an exclusive and irrevocable choice to i) employ one of several arbitration procedures outlined in the BIT; ii) submit the dispute to procedures previously agreed upon by the investor and the host country government; or iii) submit the dispute to the local courts or administrative tribunals of the host country. In the United States-Kazakhstan BIT, the investor can take an investment dispute to binding arbitration after 6 months from the date that the dispute arises. The investor may choose between the International Centre for Settlements of Investment Disputes (ICSID) and *ad hoc* arbitration using the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). Based on mutual agreement, the investors also may choose another arbitral institution or set of arbitral rules.

According to the Energy Charter Treaty (ECT), ratified by Kazakhstan in 1995, in the case of nationalisation, compensation shall be paid in a quick, adequate and efficient manner in an amount corresponding to the fair market value (Article 13). The ECT provides that investors can bring claims regarding the fair and equitable regime, national and most favoured nation treatment; foreign staffing requests; damage compensation during war, civil disorder, and similar events; guarantees relating to expropriation; and the guarantee of payment transfers related to foreign investments. Guarantees against nationalisation are also provided for in the 1985 Seoul Convention on the Establishment of the Multilateral Investment Guarantee Agency (MIGA), which Kazakhstan joined in December 2001.

Dispute settlement

Has the government ratified and implemented binding international arbitration instruments for the settlement of investment disputes?

Kazakhstan's *Investment Law* establishes rules for dispute settlement: Article 9 stipulates that investment disputes may be settled through negotiations, including with experts' involvement, or in accordance with the dispute settlement procedure earlier agreed by the parties. The same Article (paragraph 2) says that when it is impossible to settle investment disputes, they should be settled in accordance with the international treaties and legislative acts of the Republic of Kazakhstan in Kazakhstan's courts or by international arbitration as agreed by the parties.

According to foreign investors, the 2003 *Investment Law* seems to favour Kazakhstan's judicial system for dispute resolution.⁸ Under the 1994 *Investment Law*, if an investor chose international arbitration, the consent of the state would supposedly be received automatically.⁹ Under the new law, the right of foreign investors to choose international arbitration over the domestic judicial system in case of litigation must now be based on specific contractual arrangements or dispute settlement provisions included in bilateral investment treaties or the Energy Charter Treaty for disputes in the energy sector.

The 2004 *Law on International Commercial Arbitration* and the *Law on Arbitration Courts* regulate the right to arbitrate and the enforcement of arbitral awards. The *Law on Arbitration Courts* concerns disputes between residents of Kazakhstan only and provides for their settlement in private arbitration tribunals in Kazakhstan. Such arbitration is not permitted for disputes involving state interests. The *Law on International Commercial Arbitration* applies to disputes in which one party at least is a non-resident, but since wholly-owned local subsidiaries of foreign companies are considered as local residents, disputes involving Kazakh-registered subsidiaries of foreign legal entities cannot be submitted to international arbitration. Under both of these Laws, only disputes arising from contractual relationships can be submitted to arbitration.

The *Law on International Commercial Arbitration* also contains provisions on enforcement of foreign arbitration awards and gives broad authority for judicial review of arbitral awards in Kazakhstan. Although Kazakhstan has ratified the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, there has been, in recent years, a growing concern over the ability to enforce foreign arbitration awards in domestic courts. Domestic

courts are permitted to review international and domestic arbitration awards if a violation of Kazakhstan's public policy is found. Therefore, conformity to the law and the public policy of Kazakhstan is grounds for refusing recognition or enforcement of arbitral awards.¹⁰ In addition to this legal reservation, Kazakhstan's practice has not consistently been in conformity with its international commitments relating to the enforcement of arbitral awards

Foreign investors are concerned by the lack of explicit provisions for international arbitration in the 2010 *Subsoil Law*.¹¹ Under the *Subsoil Law*, investors have a limited right to bring claims to arbitration since disputes relating to the acknowledgment of rights on lands and real estate can only be brought before Kazakhstani courts.

The *Law on Mediation* adopted in February 2011 introduces mediation procedures in the country's legal framework, as an alternative means for dispute settlement. In particular, disputes arising from civil and labour relationships can be submitted to arbitration, provided that none of the parties in dispute is a state entity. Before referring a dispute to arbitration, the parties may consider settling through intermediary proceedings, in which the mediator proposes a mutually beneficial solution to the parties but does not make a decision binding upon the parties.

Among reported investment disputes involving foreign companies, most concern alleged breaches of contracts through non-payment by Kazakhstan's state entities and alleged violations of environmental regulations, tax laws and investment clauses (Annex E). Unpredictable actions by tax authorities are also frequently invoked, for example concerning value-added taxes. As in other countries in the region, political interference in judicial cases and difficulties in enforcing judgments remain frequent.¹² In addition to past disputes involving foreign investors in the oil sector (see Chapter 2), the amended *Subsoil* legislation might be a source of new controversies as it gives the government the possibility to cancel or amend contracts based on a lack of investor compliance for example with local content or environmental requirements.

Kazakhstan has ratified the main international arbitration instruments: the 1958 *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (October 1995); the 1965 *Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (July 2004). It also ratified the 1961 *European Convention on International Commercial Arbitration* in October 1995 and the 1998 *Moscow Agreement on the Mutual Execution of Decisions of Arbitration, Commercial and Economic Courts in the Territories of the Commonwealth Members States* in December 1999 (see Annex D).

Investment promotion and facilitation

Investment promotion and facilitation measures, including incentives, can be effective instruments to attract investment provided they aim to correct for market failure and are developed in a way that can leverage the strong points of a country's investment environment.

Kazakhstan has developed several investment promotion programmes providing a wide range of state support measures, for which foreign investors are also eligible if they fulfil established criteria within specific programmes. Current investment promotion schemes usually require investors to conclude individual investment agreements with the authorities, which set up specific conditions for each project and related investment preferences. Such tailor-made arrangements often lack transparency and run the risk of administrative discretion, with the possibility of differentiated treatment for individual investors depending on their economic weight and local political connections. The OECD *Instrument on Incentives and Disincentives*, which is a part of the OECD *Declaration on International Investment and Multinational Enterprises*, recommends making investment incentives as transparent as possible so that their scale and purpose can be easily determined. The OECD *Checklist for Foreign Direct Investment Incentive Policies* helps governments to carry out a thorough analysis of the costs and benefits of the incentive system.

Kaznex Invest is the sole national agency in charge of investment promotion and attraction in Kazakhstan with a wide range of responsibilities to assist foreign investors in their establishment and operations in the country. Several other agencies can also provide material and financial support to foreign and domestic investment projects. The multiplication of different institutions with sometimes overlapping responsibilities could be costly and a source of confusion, especially for new foreign investors unfamiliar with local conditions.

The government's strategy for attracting foreign investment

Does the government have a strategy for developing a sound, broad-based business environment and within this strategy, what role is given to investment promotion and facilitation measures?

The main orientations of Kazakhstan's current investment promotion policy are defined in the "Programme for Investment Attraction, Special Economic Zone Development and Export Promotion in the Republic of

Kazakhstan for 2010-14” (see Box 3.2), which takes into account the long-term economic strategy set up in the “Strategic Development Plan until 2020” and develops the main provisions of the “Governmental Programme for Enhancing Industry and Innovation Development in 2010-14”.¹³ To implement the key priorities of economic diversification and the improvement of competitiveness, the 2010-14 Programme identifies four axes of development in the priority sectors:

- Diversifying production in “traditional” industries: oil and gas sector; petroleum chemistry; ore mining and smelting; chemical industry; nuclear energy industry.
- Developing sectors based on domestic demand: machine engineering; pharmaceutical industry; construction and building materials.
- Developing sectors with export potential: agro-industrial complex; light industry; tourism.
- Developing sectors of the “economy of the future”: information technologies; biotechnologies; space activities; alternative energies.

The 2010 Programme foresees introducing three legislative packages for attracting investors:

- A basic incentive package for investments in priority sectors: all companies residing in Kazakhstan, including those with foreign participation (except in special economic zones subject to another investment regime), will be eligible for these incentives if they invest fixed assets in designated priority sectors. To obtain corresponding preferences and incentives, investors must conclude a contract with the Committee on Investment of the Ministry of Industry and New Technologies (MINT) (see below).
- A special regime for large investment projects of high importance: individual investment agreements providing for special state support will be signed for such projects with recognised foreign investors and multinational companies. State support may include: tax incentives and preferences; a minimum long-term state order or order from national companies; and other financial and non-financial incentives.
- Special economic zones and industrial zones: the relevant procedures and available incentives will be stipulated by the new law “On Special Economic Zones in the Republic of Kazakhstan”, which is currently under preparation (see below).

Whereas the government establishes the general scheme of state support and incentives available for investment projects, the choice and scope of incentives are specified on a case-by-case basis in agreements signed by individual investors with the Committee on Investment under the responsibility of the MINT. Both domestic and foreign investments as well as

Box 3.2. Programme for Investment Attraction, Special Economic Zone Development and Export Promotion in Kazakhstan for 2010-14*

Based on the assessment of the country's current FDI performance, the Programme establishes several specific targets to be achieved by the end of 2014, including: increasing domestic and foreign investment in non-primary sectors by at least 15%; increasing the share of FDI in GDP by 5%; diversifying investment sources; and concluding additional investment treaties. It also fixes the objective of improving the country's ranking in international comparisons of the business climate, such as the *Global Competitiveness Index* of the World Economic Forum and the World Bank *Doing Business* indicators.

Several "niches" within priority sectors, with the potential to increase their sales both in domestic and foreign markets, have been selected as the key investment targets, including production of aluminium oxide in the metallurgical industry, potash fertilisers in the chemical industry or glass in construction materials.

In relation to special economic zone (SEZ) development, the Programme envisages the creation of 3 new SEZs in Karaganda and "Khorogos – Eastern Gates" before the end of 2011 and the creation of 5 new industrial zones (IZs) before the end of 2014. The total cost of the Programme for the state budget will amount to KZT 19.6 billion of which KZT 13.5 billion will be for the development and creation of SEZs and IZs (see Box 3.5).

Taking into account the experience of other countries with investment promotion, the Programme sets up the timetable and main tasks for investment promotion activities to be carried out essentially by the Ministry of Industry and Trade and Kaznex Invest. It also specifies requested financing for these activities until 2014 to be covered by the state budget.

Starting in 2011, the implementation of the Programme's objective regarding the improvement of the business climate should be evaluated on the basis of annual opinion surveys of domestic and foreign investors from different sectors, the so-called "barometer" of the investment environment.

* Approved by the Resolution of the Government of Kazakhstan No. 1145 (30 October 2010); the text of the Programme is available at: <http://invest.gov.kz/?option=content&itemid=123>.

greenfield and brownfield projects are eligible for such agreements. Their main purpose is to stimulate new production and modernisation of existing facilities, increase the qualifications of the local workforce and ensure environmental protection. To decrease the financial burden of the projects in their initial stage, the contracts offer exemptions from import duties on equipments and spare parts and right to use publicly owned land. Between 2007 and the first half of 2011, the Committee on Investment signed 236 contracts covering investment projects worth USD 18 billion (Table 3.1). Among the major projects are: the expansion of metal production (Arcelor-Mittal Temirtau); the construction of a Kazakhstan-China gas pipeline in South Kazakhstan; the construction and operation of an electrolysis plant for

Table 3.1. **Investor contracts signed by the Committee on Investment (2007-1st half 2011)**

	Number of contracts	Amount (USD million)
2007	102	1 816
2008	106	4 298
2009	1	5 251
2010	20	7 204
1st half 2011	7	241
Total	236	18 811

Source: Committee on Investment (MINT).

primary aluminium products in the Pavlodar region; the creation and development of the Atash naval base in Bautino.

In the future, negotiations will be held with each major potential investor in view of expanding investments in non-primary sectors. In parallel, a tailored approach to attract foreign direct investments will be pursued to: i) find potential target investors; ii) develop and implement “road maps” with each target investor including assistance with formalities relating to opening and doing business in Kazakhstan and the possibility for meetings with key political leaders and leading companies in Kazakhstan; and iii) provide access to consulting services for the whole duration of the project and ensure post-investment support.

Within the current promotion programme, a simplified visa regime at the invitation of the Committee on Investment has been put in place in 2011 to allow foreign directors, managerial staff and high-level experts of high-technology companies to negotiate and put in place new investment projects. The new National Plan on Investment Attraction currently under preparation foresees introducing a visa-free regime with OECD member countries.

The second focus of the government’s programme between now and 2014 is the promotion of Kazakhstan’s investment image through traditional advertisements (*e.g.* billboards at airports and other public places), audio and video tools on investment opportunities on international radio and TV channels (BBC, CNN, etc.) as well as dissemination of information and analysis both in hard copy materials and via a web portal. This part of the programme also envisages active participation in international events related to investment and other economic issues. Finally, the scope of activities of national companies involved in investment attraction, notably Kaznex Invest, should be broadened both internally and abroad (see below).

Along with the general investment promotion strategy, several specific programmes have been developed, each seeking to encourage investment activities in particular areas (Box 3.3). Enterprises with foreign participation

are authorised to take part in these various programmes provided they conform to the corresponding conditions and requirements.

Box 3.3. Governmental programmes for promoting investment

The *Investor 2020 Programme* focuses on FDI promotion in priority non-primary, export-oriented and high-technology sectors, through several types of support such as information and analytical services and, for firms operating in special economic zones, tax investment incentives, a simplified mechanism for hiring foreign workers and one-stop-shop facilities for companies' establishment.

Business Road Map 2020 seeks to develop entrepreneurship, especially of small and medium-sized businesses; state support is offered in the form of lower interest on loans; loan guarantees, support for building of industrial infrastructure; service support for doing business (legal and accounting services) and personnel training.

Export 2020 Programme: enterprises eligible for this programme should be export-oriented (with an export share of at least 10% of their output), create new jobs and participate in the project implementation covering at least 15% of total project costs or 25% of the total project costs for property. Various kinds of state support might be made available for eligible firms: export trade financing and insurance; service support for exports (information, marketing, publication of materials to help exporters, promotion of trademarks, trade missions abroad); grants to exporters compensating up to 50% of their costs for activities related to export promotion (registration and certification of trademarks abroad, training in export management, market research on entry to certain markets).

Productivity 2020 Programme aims to accelerate modernisation of existing production units and create new facilities. It provides several categories of state support to enterprises in priority sectors, including payment of expert evaluation and feasibility studies of investment projects; subsidies for compensation of a part of the costs for loan interest and leasing payments for fixed assets acquisition; innovation grants for the manufacturing application of new products by design offices; introduction of management technologies ensuring production process optimisation; financial participation in personnel training, introduction of modern management and processing technologies.

Source: <http://invest.gov.kz>.

Available instruments of state support

Government programmes provide for a range of different instruments of state support, notably subsidies for loan interest payments, loan guarantees, industrial infrastructure development, training of personnel and in-kind contributions. Foreign investment is also eligible for these instruments if it fulfils relevant criteria.

Enterprises might benefit from subsidies for loan interest and leasing payments granted both for new and previously obtained loans and lease financing. A progressive subsidy scale is linked to labour productivity increases. Within the *Productivity 2020 Programme*, state support might be provided to enterprises in priority sectors for fixed capital investment in export-oriented production aimed at increasing productivity and innovation. The applicant's own participation in the project should amount to at least 20% of the total investment. The subsidy of the loan interest costs should not exceed the threshold value of the market interest rate determined twice a year by the Ministry of Economic Development and Trade. The maximum subsidy term is three years with a possible prolongation of up to ten years.

Loan guarantees might be provided for projects seeking to develop new production. The loans should be used for acquiring or modernising fixed assets with 20% of the working capital replenishment. The maximum guarantee should not be more than 50% of the global loan and up to KZT 1.5 billion per applicant. The guarantee term limit should not exceed ten years. The guarantee is provided by a financial agent authorised by the government in accordance with the decisions of the Regional Coordination Board, comprising representatives of local executive bodies, banks, business associations and independent experts.

Industrial infrastructure development support is available for projects included in the *Business Road Map Programme* and for some projects selected by the Regional Coordination Board. The funds can be allocated for construction and reconstruction of infrastructure such as roads, sewer systems, heat supply, water pipelines, railway sidings, telecommunication networks, power substations, and power transmission lines. Support should not exceed 50% of the whole project cost.

The government also provides support for training personnel and upgrading of qualifications through financing made available by regional governments and municipal districts (the *akimats*) under certain conditions. Several other existing programmes include specific modules in this area such as "Youth Training" with the objective of providing professional training to some 10 000 young people financed by the budget amounting to KZT 1.5 billion. State budget allocations to the regions of Almaty and Astana

are also available for training and assistance to self-employed and disadvantaged people.

Within the *Investor 2020 Programme*, enterprises investing in priority sectors or selected projects may benefit from various forms of support based on investment agreements signed upon the recommendation of the Foreign Investment Commission headed by the Prime Minister. The main criteria taken into consideration are the production of goods with higher value added, export orientation, high labour productivity and the number of jobs created. Selected investors can benefit from innovation grants and design office services (acquisition of technical and design documentation, adaptation and application of technologies). Support is provided to enterprises on a competitive basis subject to co-financing of at least 50% by the project applicant. A new law adopted in December 2011 introduced the possibility of additional support for technologically innovative projects notably in the form of exemptions from land and property taxation. The government also intends to establish an export-credit agency which would offer trade financing and export insurance, in particular to SMEs in non-primary sectors.

Institutional framework for investment promotion

Has the government established an investment promotion agency (IPA)? To what extent has the structure, mission, and legal status of the IPA been informed and benchmarked against international good practices?

Kazakhstan's institutional system for promoting, attracting and assisting foreign investment is quite complex as several governmental agencies have related various responsibilities which are not always clearly delineated. The Ministry of Economic Development and Trade (MEDT) is responsible for designing overall investment policy in Kazakhstan, whereas the Ministry of Industry and New Technologies (MINT) is in charge of implementing these strategic orientations with a sectoral focus. Kaznex, initially an export promotion agency created in November 2007, has become since April 2010 the main national agency for investment promotion (see Box 3.4). It was designed based on the experience of similar agencies in other countries, notably the UK, South Korea, Austria and Brazil. This joint stock company in which the MINT is the sole shareholder joined the World Association of Investment Promotion Agencies (WAIPA) in 2011.

The Intergovernmental Commissions (IGCs) previously in charge of trade and economic co-operation in general will now focus on developing investment relations with target countries including Austria, Brazil, Canada,

Box 3.4. National Agency for Export and Investment: Kaznex Invest

The Agency's main objectives are to attract foreign direct investment into non-primary sectors, identify potential investors and help them to establish in Kazakhstan providing a one-stop shop facility and ensure after-care service. To fulfil these various responsibilities Kaznex Invest carries out the following activities:

- *Organising business forums:* Kaznex Invest, in conjunction with the MINT organises international business forums with high level participation to encourage foreign enterprises to invest and to show political commitment to attracting foreign investment.
- *Assisting foreign investors in their relations with the authorities:* Kaznex Invest assists foreign investors in organising and conducting meetings with representatives of the government, ministries, national companies, local authorities, industry associations and private companies.
- *Providing information and analytical support:* Kaznex Invest gives advice on doing business in Kazakhstan at all stages of the investment project; provides information on the current and projected state of investments in Kazakhstan; conducts a review of trends in foreign investment and explores ways to improve conditions for investment in Kazakhstan.
- *Offering customised services:* Each potential investor should receive individual attention and advice by Kaznex Invest starting from its initial decision to establish a business and invest in Kazakhstan, then assistance in obtaining state preferences and finally through post-investment support.
- *Ensuring full support for investment activities in Kazakhstan:* Kaznex Invest assists in obtaining government support (privileges, preferences and other incentives) and helps with administrative procedures associated with opening and doing business in Kazakhstan.

There are currently discussions on establishing foreign representative offices in several priority countries. Further information available on Kaznex Invest: www.kaznexinvest.kz.

France, Germany, India, Italy, Japan, Luxembourg, Malaysia, the Netherlands, Saudi Arabia, South Korea, Spain, Sweden, Switzerland, Turkey, the UAE, the UK and the United States. The performance of the IGCs will be assessed based on indicators measuring the volume of investments attracted from the target country, i.e. using a similar approach to evaluate the performance of other institutions of the Ministry of Foreign Affairs. The co-chairmen of the IGC in Kazakhstan and ambassadors of Kazakhstan abroad will be held responsible for achieving the objectives expressed in terms of the volume of investments to be attracted. In addition, investors should be actively supported at the regional level by local executive bodies – the Investor Service Centres (ISC) to be established in all regions as separate departments of socio-entrepreneurial

corporations or other regional structures before the end of 2011. The ISCs will provide full services to potential investors, notably during their visits in the region and act as *de facto* regional representative offices of Kaznex Invest.

Several other organisations have specific responsibilities for foreign investment promotion. The Joint Stock Company National Welfare Fund Samruk Kazyna (www.samruk-kazyna.kz) designs regional, national or international investment projects independently or jointly with strategic, including foreign, investors and provides financing through its participation in the capital or loans. Its role is to attract public and private investment, both domestic and foreign, notably to encourage innovation in various industries.

The Development Bank of Kazakhstan (www.kdb.kz) founded in 2001 finances projects in competitive industries in non-primary sectors and infrastructure. For this purpose, it grants long-term loans for such investment and export projects and, as an agent of government, it provides bank guarantees. It can also provide investment banking services to clients in local and international capital markets. Several other funds specialise in assisting investors in particular areas, such as in creating new enterprises in manufacturing and services or expanding existing ones (Investment Fund of Kazakhstan), developing public-private partnerships in scientific organisations and in the real sector (National Innovation Fund), supporting SMEs (Damu Fund) and implementing government programmes in infrastructure (Kazyna Capital Management). Acknowledging long-term economic benefits of education, the government devotes considerable means to enhancing education standards notably by providing scholarships to Kazakhstani students in prestigious foreign universities and encouraging the creation of new establishments in co-operation with foreign entities such as the Kazakh-British Technical University and Kazakhstan's Institute of Management.

In addition to the Foreign Investors Council (see below), the government will establish in 2012 the investment ombudsman, an advisory body under its responsibility composed of ministers representing all the main ministries (Transport and Communications, Agriculture, Economic Development and Trade, Finance, Oil and Gas, Justice, Natural Resources, Tourism and Sport, Labour and Social Protection, Internal Affairs and Foreign Affairs) and including representatives from national companies and the private sector. Its role will be to control and co-ordinate public investment promotion initiatives, monitor investment activities, protect investors' rights and interests and, more generally, ensure a favourable investment climate. The government believes that the ombudsman will allow for addressing foreign investors' concerns at a high political level.

Dialogue with foreign investors

The Foreign Investors Council (FIC), created in 1998, is currently the main forum for direct dialogue between the authorities and foreign investors to address critical issues related to the country's investment activities and the business climate (www.fic.kz). It is chaired by the President of the Republic of Kazakhstan and includes, on the government side, the Prime Minister, Chairman of the National Bank and several key ministers (Foreign Affairs, Industry and Trade and Budget Planning), as well as the chairman of the Committee on Investment of MINT, which is also the executive body of the FIC. Foreign investors are represented by high-level officers from the banking sector (Royal Bank of Scotland, Deutsche Bank, JP Morgan, Credit Suisse Group, HSBC Bank), energy companies (Chevron Corporation, Total, Exxon Mobil, Lukoil, Royal Dutch Shell, ConocoPhillips, ENI), manufacturing companies (Mitsubishi Corporation, ArcelorMittal, Philip Morris International, RUSAL), telecommunications (TeliaSonera), legal and consulting companies (Baker and McKenzie, Ernst and Young, Deloitte Touch Tohmatsu) and international financial organisations (EBRD, Eurasian Development Bank, Asian Development Bank). To become a member of the FIC, interested foreign companies have to submit their application to the Committee on Investment. The main criterion is the amount of foreign investment in Kazakhstan (USD 100 million for investors operating in the subsoil sector, USD 25 million in other sectors). Representatives of international organisations involved in Kazakhstan can also participate in the FIC.

The FIC has several specialised working groups, including on oil and gas, legal matters, taxation and investment image enhancement. The working groups hold regular meetings and report to the FIC plenary sessions conducted twice a year. The Council has proposed various actions and made recommendations to encourage economic modernisation and local development, to improve the qualifications of local staff and to simplify tax and administration procedures.

Investment incentives

What mechanisms has the government established for evaluating the costs and benefits of investment incentives, their appropriate duration, their transparency, and their impact on the economic interests of other countries?

Foreign investors that have not signed investment contracts with the Committee on Investment are subject to the same taxes and enjoy the same preferences as domestic investors in accordance with the prevailing *Tax Code*

provisions. The current corporate income tax rate is 20% and non-residents' revenues are subject to a 15% income tax (see Chapter 2).

Certain tax reductions in the form of deductions from taxable income for calculations of the corporate income tax apply to all activities, notably for costs related to staff training, companies' social and charity activities, foreign exchange losses, income resulting from operations in public securities and debt securities included in the official list of the Kazakhstan Stock Exchange. The tax loss carry forward period for calculating taxable income amounts to three years (for losses generated before January 2009), 7 years (for losses related to subsoil contracts) until ten years (for losses generated after 2009). In the case of priority activities, the deductions from taxable income are based on the cost of new buildings, machinery and equipment and their reconstruction or modernisation within three consecutive years.

The general rate of value-added tax (VAT) is 12%. VAT exemptions concern *inter alia* exported goods, international transport and imported goods for subsoil use contracts. In addition, the following activities are also exempted from VAT payments: operations related to land and residential buildings; financial services; services rendered by non-profit organisations, services and works in the area of culture, science and education and goods and services in the area of medicine and veterinary medicine. VAT refunds apply on imports of equipment, agricultural machinery, helicopters and aircrafts; railway locomotives and cars; marine vessels and spare parts.¹⁴

The 2003 *Investment Law* as amended in 2010 stipulates that state support is provided by the "authorised body determined by the government" (Article 12), which is currently the Committee on Investment of the MINT. The following privileges can be made available to investors, irrespective of their nationality, subject to investment contracts concluded with the Committee:

- exemption from customs duties on imported equipment and its components required for implementing the investment project;
- state in-kind grants, which could be land, buildings, machinery and equipment, computing equipment, measuring and control devices, vehicles (excluding passenger cars) and industrial and household equipment.

Specific investment contracts could be signed for large investment projects providing for other measures of state support such as tax incentives and preferences; minimal long-term orders by state and national holding companies and other financial and non-financial incentives. Interested investors should apply to the Committee on Investments. The decision to sign such agreements is taken by the government.

Special economic zones

The first law creating special economic zones (SEZ) in Kazakhstan was adopted in January 1996 to accelerate the country's economic development and its integration into the world economy by attracting investment and encouraging export-oriented production. The legislation gave relatively large autonomy to SEZs and encouraged foreign participation in these areas. The SEZs are now governed by the 2007 law amended in 2010¹⁵ offering the same access and conditions to both domestic and foreign investors. The 2010 Government's "Programme for Investment Attraction, SEZ and Export Promotion for 2010-14" (see above) foresees the preparation of a new draft law to eliminate shortcomings of the current SEZ scheme and to comply with corresponding WTO requirements. Although the government continues to see the SEZ as a key instrument to stimulate specific investment projects in selected areas, it regularly assesses the performance of existing and new SEZs, taking into account indicators such as the volume of attracted investment, production capacity in manufactured goods and services and the number of created jobs.

Box 3.5. Special Economic Zones (SEZs) and Industrial Zones (IZs) in Kazakhstan

There are currently six SEZs in Kazakhstan:

- "Astana-new city" established in 2001 for constructing a new administrative and business centre for the capital and developing new production in the Industrial Park; current investment: KZT 977 billion of which KZT 557 billion of private investment and KZT 420 billion financed from the state budget.
- "Sea Port Aktau" established in 2002 with the objective of developing high-tech production; current investment: USD 93 million.
- "IT Park" established in 2003 to develop export-oriented information technology production; 848 jobs created so far.
- "Ontustik" created in 2005 to develop the textile industry; 497 jobs created so far.
- "Petrochemical Park" created in 2007 to develop petrochemical industries.
- "Burabay" established in 2008 for tourist infrastructure; no investment project so far.

The three additional SEZs are under development, including:

- Industrial Zone of Karaganda for metallurgy and metal processing.
- "Khorgos" International Cross-Border Cooperation Centre for business meetings mainly with partners from CIS countries.

Source: Programme for Investment Attraction, SEZ and Export Promotion for 2010-14 available at : <http://invest.gov.kz/?option=content&itemid=123>.

The 2007 Law with its 2010 amendments sets up the procedures for the creation of SEZs which are established by the President and their activities defined by Presidential Decree based on proposals by local or central executive bodies. The SEZs are created for 25 years on state-owned land plots for non-agricultural use or on land plots which were lawfully expropriated. The Law also defines the main tasks of SEZ administrative bodies, notably their interaction with state bodies and their decisions regarding the allocation and cost estimation of land plots used by SEZ participants. Tax and other privileges of companies operating in SEZs are defined in accordance with tax legislation. The main advantages currently granted to SEZ participants are exemptions from: income tax, land tax, customs duties and VAT on goods/services made/consumed in SEZ-related activities as well as on buildings for administrative/industrial facilities for SEZ-related activities.

The authorities plan to enhance the attractiveness of SEZs, including for foreign investors and eliminate the main weaknesses of the current regime, notably inefficient management both at the state level (the lack of a centralised state agency in charge of SEZs) and at the SEZ level, including the unstable tax environment, the slow allocation of budget funding for SEZ development and excessive bureaucratic and administrative procedures. Several steps are currently envisaged but have not yet been approved, notably exempting for up to 10 years payments for land tenure in SEZs; increasing from 15% to 40% the marginal rate of depreciation used for IT software; introducing a special process for employing foreign labour in SEZs without requiring the search for a local employee with equivalent qualifications and “one-stop shop” services to SEZ participants.

Promoting foreign-local business linkages

What steps has the government taken to promote investment linkages between business, especially between foreign affiliates and local enterprises? What measures has the government put in place to address the specific investment obstacles faced by SMEs?

The *Road Map for Business 2020* defines the main categories of state support made available to small and medium-sized enterprises (SME), notably subsidised interest on loans; loan guarantees; assistance in developing production infrastructure; services to support businesses (consulting, legal, accounting, etc.); training of personnel. The Damu Entrepreneurship Development Fund (www.damu.kz), whose sole shareholder is Samruk-Kazyna, is the main agency implementing this programme by providing

credits to SME via banks, issuing loan guarantees, financing leasing transactions and developing training and information programmes for example on innovation policies and female entrepreneurship. The Damu Fund has several regional offices working closely with local executive bodies, entrepreneurs and public organisations. The Fund plans to launch a call centre for entrepreneurs and a business portal to improve information exchange and to encourage feedback from local entrepreneurs.

Local content requirements and public procurement should, in principle, benefit SMEs but the experience in practice has been less favourable. Business associations consider that in spite of the government's declared support to SMEs, existing pro-SME schemes are not deemed fully efficient and their economic needs are not sufficiently taken into account. Difficult access to bank loans and prohibitive interest rates hamper the expansion of family enterprises and other small firms, even if these firms have economically viable projects. According to representatives of SMEs, the creation of a specialised agency for SMEs under the Prime Minister could help them better to defend their specific interests, especially if the agency were to channel state financing directly to the sector rather than – as is the case today – via the banking sector. Rather than the absence of an specialised governmental agency, the main problem is the lack of bank lending to SMEs, which stems from insufficient technical expertise within domestic banks to evaluate the specific risks of SME and adapt their policies to their needs.

Trade policy

Policies relating to trade in goods and services can support more and better quality investment by expanding opportunities to reap scale economies and by facilitating integration into global supply chains, boosting productivity and rates of return on investment.

External trade represents almost 70% of GDP and plays an important role in Kazakhstan's economy. But the country's heavy dependence on exports of primary goods (more than 70% of total exports) remains a source of potential vulnerability to external economic and price fluctuations. Export diversification, including by promoting foreign investment in export-oriented sectors, is therefore one of the government's key priorities. The authorities provide financial support to exporters (for instance in the form of reimbursement of 50% expenses related to the development of exports) and have created a specialised export promotion agency. The entry into force of the Customs Union (CU) with the Russian Federation and Belarus has

potentially important implications for Kazakhstan's trade and investment relations, enabling it to take part directly in a large market of almost 170 million consumers. It will also influence its cross-border trade procedures, which have so far been the country's weak point in international comparisons.

WTO and international trade agreements

How actively is the government increasing investment opportunities through market-expanding international trade agreements and by implementing its WTO commitments?

Kazakhstan applied for WTO membership in January 1996 but the accession process has been slow until recently, delayed notably after the creation of the CU with the Russian Federation and Belarus. While the three CU partners decided to pursue their WTO negotiations separately, the recent breakthrough in the Russian Federation accession will likely have a positive impact on Kazakhstan's process.¹⁶ Kazakhstan's authorities have embarked on far-reaching trade policy reforms adopting a wide range of new legislation in compliance with WTO requirements, notably developing an international system of technical regulations and standards, increasing responsibility and penalties for violation of intellectual property rights, amending import licensing and registration procedures. At the same time, certain measures contradict WTO disciplines such as Kazakhstan's Local Content Policy, which requires subsoil contractors to use locally made material and products and employ local enterprises for their operations (see Chapter 2).

Before the entry into force of the CU's common import tariff, the country's potential gain resulting from WTO accession was estimated at 6.7% of its GDP in the medium term and 17.5% in the long run, based on improved market access to international markets and tariff reductions. Some 70% of the total gains to Kazakhstan from WTO accession are estimated to come from the liberalisation of barriers to FDI in services (Jensen, Tarr, 2007).

In parallel with its multilateral efforts, Kazakhstan has concluded a number of bilateral and plurilateral trade agreements mainly with the countries of the Commonwealth of Independent States (CIS) (see Table 3.2).

The Customs Union between Kazakhstan, Russian Federation, and Belarus came into effect on 1 July 2010: the CU common external customs were introduced on 1 January 2010 and the CU Customs Code on 1 July 2010, followed on 1 January 2012 by the creation of a common economic space with free movement of services, goods, labour and capital between the three countries. The CU establishes common external customs borders for the three member

Table 3.2. **Trade agreements concluded by Kazakhstan**

Agreements	Entry into force	Coverage
FTA Kazakhstan – Armenia	3 January 2002	Goods
FTA Kazakhstan – Azerbaijan	20 July 1997	Goods
FTA Kazakhstan – Belarus	20 July 1999	Goods
FTA Kazakhstan – Kyrgyz Republic	11 November 1995	Goods
FTA Kazakhstan – Georgia	16 July 1999	Goods
FTA Kazakhstan – Moldova	23 February 1996	Goods
FTA Kazakhstan – Russian Federation	7 May 1998	Goods
FTA Kazakhstan – Tajikistan	5 December 1997	Goods
FTA Kazakhstan – Ukraine	19 October 1998	Goods
FTA Kazakhstan – Uzbekistan	16 May 1998	Goods
Agreement on the Establishment of the Single Economic Space between Kazakhstan-Russian Federation-Belarus-Ukraine	Signed 20 May 2004 (not implemented)	Goods
Customs Union: Belarus, Kazakhstan, Russian Federation	1 July 2010	Goods (Customs Union)
FTA Commonwealth of Independent States: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Russian Federation, Tajikistan, Ukraine, Uzbekistan	30 December 1994	Goods
Economic Cooperation Organisation: Afghanistan, Azerbaijan, Iran, Kazakhstan, Kyrgyz Republic, Pakistan, Tajikistan, Turkey, Turkmenistan, Uzbekistan	17 February 1992	Goods (partial scope agreement)
Eurasian Economic Community (EAEC): Belarus, Kazakhstan, Kyrgyz Republic, Russian Federation, Tajikistan Observer status: Armenia, Moldova and Ukraine)	31 May 2001	Goods
New Zealand – Kazakhstan/Belarus/Russian Federation	Under negotiation	
EFTA – Kazakhstan/Belarus/Russian Federation	Under negotiation	

Source: WTO (www.wto.org).

countries, a common external trade policy, including common duty rates. The Inter-State Council, composed of heads of state and government, is a supra-national institution, with the authority to make strategic decisions and determine further development strategy. The CU's Commission is the executive body which adopts its decisions by a two-thirds qualified majority. With the Russian Federation having 57% of the votes and Belarus and Kazakhstan each having 21.5%, the Russian Federation effectively holds a veto on any measure. Some issues have to be resolved by consensus and in case of disagreement the decision might be taken at a higher political level.

The Uniform Customs Code of the CU defines the partner countries' uniform customs territory, the functioning of their customs bodies and various customs modes for temporary imports, customs warehouses, duty free shops or transit. The CU's unified import duties are mainly based on the Russian existing tariffs (82% of Russian tariffs remain unchanged), whereas

Kazakhstan has increased some 48% and decreased 5% of its initial customs tariffs. The CU's external uniform customs tariffs now vary for the majority of items from 0% to 35% and the average arithmetic level of applied import customs duties amounts to 10.6%. Kazakhstan will receive 7.3% of collected import duty revenues compared to 88% for the Russian Federation and 4.7% for Belarus (Lainela, 2010). The preliminary estimations of economic effects of the creation of the CU indicate the predominance of negative trade-diversion over positive trade-creation effects for the three CU partners and a limited impact on Kazakhstan's GDP and its trade balance (Vinhas de Souza, 2011).

Duties on exports to third countries remain under the responsibility of member countries: Kazakhstan currently applies a limited number of export duties mostly on products essential for food security, on ferrous and nonferrous metals, and seasonal export bans on fuel and lubricants. Export duties on products essential for food security might be introduced if needed. There are no quantitative export restrictions.

The shift of border checks to the CU's external border should accelerate cross-border trade procedures: starting in July 2010, customs authorities were supposed to release goods no later than one working day after the submission of the customs declaration registration and even within 4 hours for certain categories of goods. In parallel, the authorities will implement a risk management system in customs control and automation for customs-related procedures. Kazakhstan should improve its customs control on its southern border with China which now forms the CU's external border (see below).

Kazakhstan's government sees the establishment of the CU as a positive step and adequate response in the current world economic context as it creates a large unified customs territory of 167 million persons, provides a strong stimulus for the development of new industries and creates an enabling environment for international co-operation. In 2011, trade turnover among the CU partners has significantly increased (by more than 40% in the first half of 2011). In principle, both incumbent firms and newly established foreign investors should benefit from harmonisation of customs procedures, further homogenisation of the business and trade environment and the establishment of a larger market place allowing them to sell their products over a larger area and reach more consumers. Whether and when this expected positive impact of the CU on FDI flows in partner countries will occur and whether it will result in some reallocation of investment within the CU itself will very much depend on other aspects of the countries' business climate such as taxation and access to infrastructure. For example, Kazakhstan's more favourable taxation regime could motivate some Russian firms to develop their operations in Kazakhstan. According to available data for the first half of 2011, FDI inflows to Kazakhstan from its CU partners increased by almost 40% while Kazakhstan's outflows to the Russian

Federation picked up by some 65% compared to the same period of the previous year. Kazakhstan's geographical remoteness and restrained domestic market are nevertheless likely to limit the country's FDI attractiveness in terms of a supply base for the CU market for investors from outside of the CU.

Streamlining border procedures

What recent efforts has the government undertaken to reduce the compliance costs of customs, regulatory and administrative procedures at the border?

Enhancing border trade procedures remains an important task for Kazakhstan's authorities as the country's current performance in this area remains poor even compared to neighbouring countries. In the 2012 World Bank's *Doing Business* report, Kazakhstan's rank for the indicator "trading across borders" is 176th out of 183 economies reflecting the complexity of import/export procedures, time required and high costs in the country (World Bank, 2012).

It is too early to assess the impact of the new customs regime resulting from the entry into force of the CU. The "one stop shop" facility operational since 2010 should in principle accelerate and simplify procedures for importers and exporters.

Within the Programme for e-government development for 2008-10, the Customs Control Committee under the Ministry of Finance developed the Customs Automated Information System and e-customs information system. The Customs Web-Portal (<http://e.customs.kz/wps/portal/customs/>) provides a unified access point to electronic services and information resources related to international trade procedures. The Customs Gateway ensures informational exchange with all participants based on the agreed and standard mechanisms, as well as the automated business processes associating customs systems and related services of other government bodies and international organisations. The single-window system for export and import transactions is to be established in 2013. Individuals importing goods for personal use of the total value up to EUR 1 500 and with a total weight not exceeding 50 kg are exempted from customs duties.

Risk management is the basic principle of modern customs control methods, allowing for a more efficient use of resources without reducing control capacities. The Selective Control and Risk Management component of the e-customs information system has been developed to simplify customs clearance procedures and reduce administrative discretion through the

automated risk management system identifying the main risk areas with respect to goods, entities and countries. The so-called TC-SCAN inspection and examination system has been installed at border-crossing points with China. By allowing the scanning of objects in transit and inspecting containers without opening them, this system has considerably reduced customs clearance procedures.

Competition policy

Competition policy favours innovation and contributes to conditions conducive to new investment. Sound competition policy also helps to transmit the wider benefits of investment to society.

Legal and institutional framework

Kazakhstan started developing its legal and institutional framework by the end of the 1990s: its first competition legislation, including the laws “On Unfair Competition” and “On Natural Monopolies”, was adopted in 1998. The new law “On Competition”,¹⁷ which entered into force on 1 January 2009, defines monopolistic activities, state participation in business activities and state monopolies and specifies the role and functions of the state antimonopoly body in antitrust actions and in the protection of competition (see Box 3.6).

The Government Programme for 2010-14 includes several initiatives to enhance the country’s competitive environment, notably by reducing state involvement in the economy, starting to demonopolise some economic sectors and improving antimonopoly control of product markets. In line with these general goals, the Antimonopoly Agency has developed a specific *Programme for Competition Development in Kazakhstan*, which sets several objectives, including the creation of more favourable conditions for entry of new market participants and raising public awareness of competition issues. The *Programme* will analyse the situation in a number of the sectors such as railways, aviation, fuel and energy, and telecommunications to propose concrete measures to enhance competition in these areas. For instance, following the proposal by the Antimonopoly Agency, the list of regulated services subject to natural monopolies was modified with respect to connection and traffic transmission telecommunication services. A similar approach is now under consideration for public postage services. According to the Competition Law, the opinion of the Agency is required for authorising the renewal of activities of state enterprises. So far, the Agency has refused to give its consent for further activity to 264 state enterprises based on the competitive environment in their respective areas of operations. At the same

Box 3.6. **Agency of the Republic of Kazakhstan for Protection of Competition (Antimonopoly Agency)**

According to the Law “On Competition” (Chapter 6), the integrated system of the antimonopoly body consists of the state central agency and its territorial offices. The main responsibilities of the antimonopoly body are:

- facilitation of fair competition;
- prevention, detection and investigation, suppression of violations of the antimonopoly legislation;
- control over economic concentration;
- demonopolisation of market entities restricting competition.

The Agency's Chairman and five other Board members are nominated and dismissed by the government. The Agency is headed by an executive secretary nominated by the President of the Republic upon agreement with the Prime Minister. The Agency activities are financed out of the state budget (KZT 588 million in 2011). In 2011, the total staff was 218 persons.

In the first half of 2011, the Agency and its local subdivisions initiated 64 investigations related to possible violations of the antimonopoly legislation. During the same period, 44 investigations were completed, of which 32 cases led to administrative proceedings.

The Agency's Strategic Plan for 2009-11 defines its main mission for this period, notably protecting competition, restricting monopolistic activity and co-ordinating inter-sectoral activities.

Source: www.azk.gov.kz.

time, the Agency agreed that 4072 state enterprises continue their activities, including 470 enterprises invited to abandon some of their operations.

In 2011, the Agency implemented regional competition development programmes. It also works on improving the legislative framework and its harmonisation with other legislative acts: its recent legislative initiatives include the draft bills on decreasing state interference in the economy and on the impact of a lighter administrative burden on the operations of market entities. Within the framework of the Customs Union with the Russian Federation and Belarus, the partner countries signed an agreement on uniform principles and rules of competition, which foresees the development of economic co-operation and harmonisation. The Agency does not seem to dispose of sufficient human and material resources to carry out these increasing responsibilities in addition to its main mission – facilitate fair competition and prevent and investigate violations of antimonopoly legislation.

Infrastructure and financial sector development

Sound infrastructure development policies ensure scarce resources are channelled to the most promising projects and address bottlenecks limiting private investment. Effective financial sector policies facilitate enterprises and entrepreneurs to realise their investment ideas within a stable environment.

Developing transport infrastructure is crucially important for a land-locked country such as Kazakhstan. Although its road and rail networks are generally more developed than in other Central Asian countries, its geographical orientation privileging connections with the Russian Federation over China and neighbouring countries and chronic underinvestment in the sector are not commensurate with the authorities' declared objective to position Kazakhstan as a key transit road between China and Europe (International Crisis Group, 2011). High transport costs also hinder foreign trade and consequently reduce the country's attractiveness for foreign investment in export-oriented sectors. In recent years, domestic investment in road development has increased (by 20% between 2003 and 2010) and foreign investment, particularly from China, has also contributed to modernise and diversify the rail and road network (see Chapter 1). Coping with the considerable investment challenges in this area will require developing further concessions and public-private partnerships, including with foreign investors.

Aware of the importance of infrastructure development, the government has put in place several measures and programmes. The programme for the Development of Transport Infrastructure for 2010-14 provides for significant financial resources mainly through the state budget and supplemented by companies' own resources, concession agreements and external borrowing. Similar programmes exist for developing agriculture, the nuclear power sector and the electric-power industry.

The Law "On Concessions" (7 July 2006) defines the legal conditions for concessions and regulates the rights and obligations of partners in concession agreements.¹⁸ To deal with the increasing number and complexity of concessions agreements, the Centre for Public-Private Partnership was established in July 2008 to evaluate concession deals and to recommend further improvements in public-private partnership activities. The Centre is involved in all stages of the concession process, including appraisal of concessions deals (22 in 2009, 6 in 2010), feasibility studies (6 in 2009, 5 in 2010), examination of documentation and concession applications

submitted for tenders, consideration of state guarantees for individual concessions and co-financing by the state budget and the monitoring of concession projects.¹⁹

Notes

1. Five specialised Working Groups were created in 2008 under Deputy Prime Minister Orynbayev to address the various aspects of *Doing Business*, with strict timeframes and reporting requirements.
2. Law "On Amendments to Some Legislative Acts of the Republic of Kazakhstan on the Issues of Simplification of State Registration of Legal Entities and Record Registration of Branches and Representations" (20 January 2010).
3. According to the *Law on Private Business* (Article 6.3), small enterprises are defined as incorporated individual entrepreneurs employing up to 50 persons on average during the year and legal entities with the same number of employees and average annual assets up to 60 thousand times the monthly calculation index set up annually in the state budget. In 2010, more than one million small businesses operated in Kazakhstan, generating almost one third of the country's GDP (*World Finance Review*, 2010).
4. The six procedures include: i) opening a bank account and deposit initial capital; paying the registration fee into the account of the Ministry of Justice; ii) state registration of the legal entity, statistical and tax registration at the Public Registration Center; iii) making a company seal; iv) notarising state registration documents; v) opening the current account in the bank; and vi) registering for obligatory life and health insurance for employees. In 2010, the total cost of registration procedures amounted to KZT 17 000 (*World Bank*, 2010b).
5. *Land Code*, Article 23, paragraph 4.
6. Order of the Government No. 393 (7 May 2010).
7. Agreement on the Unified Customs Register of Intellectual Property Items of the Customs Union Member States (Law No.322-IV ZRK, 30 June 2010); Joint Decree of the Minister of Finance "On Approval of the Rules of Interaction and Information Exchange between the Customs Bodies and the Authorized Body of the Republic of Kazakhstan in the Field of Intellectual Property Rights Protection" (Law No. 253, 20 August 2010).
8. US Department of State (2006).
9. UNESCAP (2003), p. 38.
10. Art. 33.1(2) of the Law of the Republic of Kazakhstan On International Commercial Arbitration:
 "(...) If the competent court establishes that the recognition and enforcement of the award is contrary to the public policy of the Republic of Kazakhstan, or the dispute in relation to which the award was made cannot be the subject of the arbitral proceedings under the law of the Republic of Kazakhstan."
11. US Department of State (2011).
12. US Department of State (2008).
13. Strategic Development Plan until 2020 (Decree of the President No. 922, 1 February 2010); Governmental Programme for Enhancing Industry and

Innovation Development in 2010-14 (Decree of the President No. 958, 19 March 2010).

14. More information on taxation issues is available on: <http://invest.gov.kz>.
15. Law No. 274 "On Special Economic Zones in the Republic of Kazakhstan" (6 July 2007) as amended by Law No. 297-IV "On Introducing Amendments and Additions to Certain Legislative Acts on Customs Regulation and Taxation" (30 July 2010).
16. By the end of 2011, Kazakhstan completed bilateral negotiations on market access with most WTO partners, including with the EU and the US. The next meeting of the Working Party on Kazakhstan's accession is expected to take place in the first half of 2012.
17. Law No. 112-IV On Competition (25 December 2008).
18. See: <http://eng.minplan.kz/economyabout/8011/>.
19. Information on planned and implemented concession projects managed by the Public-Private Partnership Center is available on: www.ppp-center.kz/rus/activity/projekt/?cid=1.

Bibliography

- American Chamber of Commerce in Kazakhstan (2011a), *Investors' Voice*, February, www.amcham.kz.
- American Chamber of Commerce in Kazakhstan (2011b), *Investors' Voice*, April, www.amcham.kz.
- Ernst and Young (2010), *Kazakhstan Investment Attractiveness*.
- FIAS (2001), *Cumulative Costs of Delay of Investment Projects in Kazakhstan*, available at www.InvestKZ.com.
- International Crisis Group (2011), *Central Asia: Decay and Decline*, Asia Report No. 21, 3 February.
- Jensen, Jesper and David Tarr (2007), *The Impact of Kazakhstan Accession to the World Trade Organisation: A Quantitative Assessment*, World Bank Policy Research Working Paper No. 4142, March.
- Lainela, Seija (2010), "Russia, Belarus and Kazakhstan form Customs Union", BOFIT (Bank of Finland) Focus, 3 August.
- Program (2010), *Program for Investment Attraction, Special Economic Zone Development and Export Promotion in Kazakhstan for 2010-2014*; <http://invest.gov.kz/?option=content&itemid=123>.
- OECD (2003), *Checklist for Foreign Direct Investment Incentive Policies*; www.oecd.org/dataoecd/45/21/2506900.pdf.
- OECD (2006), *Policy Framework for Investment*, www.oecd.org/daf/investment/pfi.
- OECD (2010), *Policy Framework for Investment – User's Toolkit*, www.oecd.org/investment/pfitoolkit.
- OECD (2011), *OECD Declaration on International Investment and Multinational Enterprises*, www.oecd.org/daf/investment/declaration.
- United States Department of State (2008), *Investment Climate Statements, Kazakhstan*.

United States Department of State (2011), *Doing Business in Kazakhstan 2011*.

Vinhas de Souza Lúcio (2011), *An Initial Estimation of the Economic Effects of the Creation of the EurAsEC Customs Union on Its Members*, Economic Premise, the World Bank.

World Bank (2010a), *Doing Business 2011*, <http://doingbusiness.org>.

World Bank (2010b), *Making a Difference for Entrepreneurs*, *Doing Business 2011: Kazakhstan*.

World Bank (2011), *Doing Business 2012*, <http://doingbusiness.org>.

World Finance Review (2010), *Kazakhstan in the Post-Crisis World: A Systemic Choice for Long-Term Growth Prospects*, May.

WTO (2000), *Information on Industrial Property Rights in the Republic of Kazakhstan*, WTO document WT/ACC/KAZ/26, 22 September.

Chapter 4

Kazakhstan's Policies Promoting Responsible Business Conduct

Responsible Business Conduct (RBC) principles and practices are recognised as an important part of the investment climate and therefore increasingly integrated within public and corporate policies aimed at attracting investment and enhancing sustainable development. Kazakhstan has not yet developed a comprehensive policy for promoting RBC and has not established a specific government institution in charge of these issues. Enterprises in Kazakhstan disclose information on social and environmental issues only on a voluntary basis, and market pressure for disclosure is weak. Corruption remains a serious challenge in Kazakhstan in a number of areas such as public procurement, use of subsoil resources and land and customs and tax administration. Kazakhstan's development strategy has increasingly integrated environmental protection and sustainable development considerations, notably in the 2007 Environmental Code.

Introduction

Responsible Business Conduct (RBC) principles and practices are recognised as an important part of the investment climate and therefore increasingly integrated within public and corporate policies aimed at attracting investment and enhancing sustainable development. For these reasons, the *Policy Framework for Investment* which covers the main policy areas affecting the investment environment (see Chapter 3) also includes RBC aspects. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) which form part of the *OECD Declaration on International Investment and Multinational Enterprises* (MNEs) provide recommendations addressed by governments to MNEs in all major areas of business ethics and set up general principles for governments' policies in support of private RBC initiatives and international co-operation in this area. The *Guidelines* were first adopted in 1976 and have been reviewed several times, most recently in 2011 (Box 4.1).

This chapter reviews policies and the institutional and regulatory framework put in place in Kazakhstan to promote RBC in the main areas covered by the *Guidelines*, notably disclosure, human rights, employment and labour relations, consumer interests, environment and the fight against corruption.

Box 4.1. The 2011 update of the OECD Guidelines for MNEs

The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.

Following the update in May 2011, the *Guidelines* include a new human rights chapter, a new and comprehensive approach to due diligence and responsible supply chain management and important changes in many specialised chapters.

The *Guidelines* include a set of voluntary recommendations in all major areas of corporate responsibility, namely:

- disclosure;
- human rights;

Box 4.1. The 2011 update of the OECD Guidelines for MNEs (cont.)

- employment and industrial relations;
- the environment;
- combating bribery, bribe solicitation and extortion;
- consumer interests;
- science and technology;
- competition;
- taxation.

The *Guidelines* comprise a distinctive implementation mechanism, National Contact Points (NCP), which are government offices charged with advancing the *Guidelines* and handling enquiries in the national context and supporting mediation and conciliation procedures, called “specific instances”. The updated *Guidelines* provide clearer and reinforced procedural guidance to strengthen the role of NCPs, improve their performance and foster functional equivalence.

Note: The 43 adherent countries to the *Guidelines* comprise the 34 OECD member countries and 9 non-OECD countries (Argentina, Brazil, Colombia, Egypt, Latvia, Lithuania, Morocco, Peru and Romania).

Source: The full text of the *Guidelines*, including commentaries are available at : www.oecd.org/daf/investment/guidelines.

General policies for promoting responsible business conduct

According to the *Guidelines*, enterprises should take fully into account established policies in the countries in which they operate and consider the views of other stakeholders. Effective implementation of the *Guidelines* and a meaningful contribution of companies to economic, environmental and social progress require governments and business to work in partnership and in a framework of mutual trust in accordance with their respective rights and duties (Box 4.2). The government’s primary role is to provide an adequate regulatory framework in areas covered by the *Guidelines*, to provide incentives for companies to comply with this framework and to build on it to develop good business practices.

The updated *Guidelines* address several new issues, notably aspects related to due diligence, supply chains and the role of the internet. Enterprises are invited to carry out risk-based due diligence to identify, prevent and mitigate any actual or potential harm in areas covered by the *Guidelines*.¹ They should avoid causing such adverse impacts, whether through their own activities or when they are directly linked to their operations, products and services through a business relationship.²

In light of the importance of the mining sector in Kazakhstan, and development of the country’s outward investment in this sector, the

Box 4.2. Working in partnership to implement the Guidelines for Multinational Enterprises

“The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end.

Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of enterprises, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration.

Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective.

Governments adhering to the *Guidelines* are committed to continuous improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.”

Source: *OECD Guidelines for Multinational Enterprises*, Preface, paragraph 9.

government might consider endorsing and encouraging dissemination among companies of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (OECD, 2011).

Kazakhstan has not yet developed a comprehensive national policy for promoting RBC principles and practices and has not established a specific government institution in charge of these issues. As a result, the main channel for disseminating and imposing RBC concepts is through legal provisions of relevant laws, notably in the area of the environment and the fight against corruption.

Existing trade and investment agreements signed by Kazakhstan incorporate only general references to RBC issues. Participation of the Kazakhstani business sector in the UN Global Compact, a strategic policy initiative for businesses committed to align their operations and strategies with ten universally accepted principles in the areas of human rights, labour, the environment and corruption, is still relatively limited: among the country’s 23 participants (out of 8700 in total), most are local NGOs, foundations and business associations (UN Global Compact, 2011).

There is no general good governance code for companies in Kazakhstan but the government and business associations have started some initiatives to

raise awareness of RBC issues and promote good practices in this area with the emphasis on the development of socially responsible projects and investment in human capital. The President annually awards “Paryz” (“Honours” in the Kazakh language) for achievements in corporate social responsibility. In 2010, 434 enterprises applied for these awards, which were granted in the category of “best social project” to Karachaganak Petroleum Operating B.V. (a large enterprise in West Kazakhstan), Otkanzhar LLP (a medium-sized firm in the Karaganda region), and Saulet LLP (a small firm from East Kazakhstan) and in the category “best socially responsible enterprise” to KazZink LLP, Titan LLP and Altyn Asel LLP. Business associations have also started to become active in the area of RBC. For example, the Chamber of Commerce has recently created a special group on corporate social responsibility.

Disclosure

“Enterprises should ensure that timely and accurate information is disclosed on all matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the company as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.”

Source: OECD Guidelines for Multinational Enterprises, Chapter III.

The updated *Guidelines* broaden and reinforce recommendations on enterprises’ disclosure policies, in particular with respect to information on board members, related party transactions, the extent to which the enterprise subscribes to codes of conduct, and internal and independent audits.

In Kazakhstan, the amendments to the Joint Stock Company Law and the Law on Accounting and Financial Reports impose corporate disclosure requirements for annual reports and specify the kind of information to be covered in corporate annual reports. Enterprises must now prepare annual financial statements in compliance with International Financial Reporting Standards (IFRS) and provide explanatory notes in the annual report with a description of conflicts of interest (American Chamber of Commerce, 2011a). Other information, including on social and environmental issues, is only disclosed on a voluntary basis, however. A lack of harmonised reporting methodologies and the varied use of indicators often make it difficult to verify and compare companies’ reports. Most companies do not to disclose any information beyond what is legally required, which reinforces the general

tendency for non-transparency and even secrecy which prevailed in the past. Market pressure for public disclosure is restrained given the limited number of Kazakhstani companies that are publicly quoted. As a result, the level and amount of corporate information available to stakeholders is scant and its quality and reliability insufficient, compounded by the lack of qualified staff in audit companies.

Kazakhstan's further progress in joining the Extractive Industries Transparency Initiative (EITI, 2011) would greatly contribute to improve disclosure practices in this critical sector (see Chapter 3). The EITI involves a coalition of governments, companies and civil society to strengthen governance by improving transparency and accountability in the extractive sector. Kazakhstan was designated as a candidate country that is "close to compliant" by the EITI Board at the end of 2010 (www.eiti.org).

Human rights

"States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international rights obligations of the countries in which they operate as well as relevant domestic laws and regulations: respect human rights..., within the context of their own activities, avoid causing or contributing to adverse human rights impacts... seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations... have a policy commitment to respect human rights... carry out human rights due diligence as appropriate... provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts..."

Source: *OECD Guidelines for Multinational Enterprises*, Chapter IV.

The updated *Guidelines* include new recommendations on human rights, developed in close consultation with the UN Secretary-General Special Representative for Business and Human Rights. They establish that firms should respect human rights in every country in which they operate.

Kazakhstan's chairmanship of the Organization for Security and Co-operation in Europe (OSCE), which highlighted the country's ambitions to play an increasing role in international relations, focused attention on its performance in the area democratic reforms and protection of human rights. The country has signed most of the relevant international agreements, including the Universal Declaration on Human Rights (see Annex D). International monitoring such as the *Universal Periodic Review* at the UN Human Rights Council has nevertheless raised some concerns, notably

regarding media freedom and control of internet content. In its review of Kazakhstan carried out in May 2010, the UN Committee on Economic, Social and Cultural Rights observed “with concern the low level of awareness of human rights in general”, and expressed “deep concern” about the precarious situation of migrant workers (Human Right Watch, 2011).

Employment and industrial relations

“Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards: respect the right of workers employed by the multinational enterprises to establish or join trade unions..., respect the right of workers to have trade unions and representative organisations recognised for the purpose of collective bargaining and, engage in constructive negotiations...; contribute to the effective abolition of child labour..., contribute to the elimination of all forms of forced or compulsory labour... be guided throughout their operations by the principle of equality of opportunity and treatment in employment... provide training with a view to improving skills levels...”

Source: OECD Guidelines for Multinational Enterprises, Chapter V.

The International Labour Organization (ILO) is the competent body to set and deal with international labour standards and to promote fundamental rights at work as recognised in its 1998 Declaration on Fundamental Principles and Rights at Work. The *Guidelines*, as a non-binding instrument, have a role to play in promoting observance of these standards and principles among multinational enterprises.

Kazakhstan has ratified all eight conventions covered by the ILO Declaration on Fundamental Principles and Rights at Work, including on forced and compulsory labour (Convention No. 29), freedom of association (Convention No. 87), the right of collective bargaining (Convention No. 98), equal pay (Convention No. 100), the abolition of forced labour (Convention No. 105), the elimination of discrimination in employment and occupation (Convention No. 111), the minimum working age (Convention No. 138) and the prohibition of the worst forms of child labour (Convention No. 182). It has also ratified a number of other ILO conventions (see Annex D).

Kazakhstan’s Constitution (Article 24) provides for the right to freedom of labour and the free choice of occupation and profession. Forced labour is authorised only through a sentence of a court or during a state of emergency or martial law. It also guarantees the right to safe and hygienic working

conditions, just remuneration for labour without discrimination, and social protection against unemployment. The right to individual and collective labour disputes, including the right to strike, is recognised.

Implementing these rights is ensured by labour legislative norms. The new *Labour Code* which entered into force on 1 June 2007 brings key provisions of previous labour-related laws under a single umbrella and introduces new regulations, for example by extending minimum vacation time from 18 to 24 days and making it more difficult to suspend labour contracts. Its objective is to protect the rights and interests of all parties and establish guaranteed labour rights and freedom. It seeks to provide an adequate system of labour relations allowing for labour market efficiency while ensuring the development of a social partnership.

To comply with the ILO conventions, Kazakhstan has introduced the relevant principles into its national legislation. In line with the ILO 1976 Tripartite Consultation (Convention No. 144), the Constitution and the laws “On Public Associations” and “On Trade Unions” protect workers and their representatives from any discrimination resulting from their status, their activity as workers’ representatives or their membership in trade unions. Forced labour is prohibited by the Labour Code (Article 8). In compliance with the 1948 Convention on Freedom of Association and Protection of the Right to Organise (Convention No. 87), the Constitution, the *Civil Code* and the laws “On non-commercial organisations”, “On Public Associations” and “On Trade Unions” provide for the right of entrepreneurs and workers to unite in order to co-ordinate their activities, present and protect their common interests and labour rights and improve labour conditions, including health care and environmental protection. The legislation also refers to the right to settle disputes and conflicts and legal assistance. However, some NGOs consider that the possibility for independent trade unions to establish and function properly remains limited in Kazakhstan.

The Federation of Trade Unions and the Labour Confederation of Kazakhstan are the main worker associations aimed at protecting their members’ interests. The Federation has 2.64 million members and includes 26 sectoral branch trade unions, 14 regional (oblast) associations and the Alliance of Trade Unions of Astana. The Labour Confederation with some 400 000 members has six sectoral branch trade unions. Both the Federation and the Labour Confederation have representatives in state bodies and in public and other organisations, including foreign entities.

There are several employers’ associations in Kazakhstan. The Confederation of Employers, founded in December 1999, consists of 40 public associations and 42 large branch/sectoral enterprises that represent some 3 500 legal entities with a total of 350 000 workers. The Eurasian Industrial

Association created in February 2001 is a non-commercial voluntary association of enterprises. The nationwide Union of Commodity Producers and Experts (“Atameken”), created in 2005, brings together 45 national and 16 regional (oblast) associations of entrepreneurs, representing the interests of enterprises in the mining, metallurgy, and oil and gas sectors, agriculture, light and food industries, the finance sector, the construction industry and in mechanical engineering.

In line with the ILO Minimum Age Convention (No. 138) and Worst Forms of Child Labour Convention (No. 182), the Labour Code (Article 30) does not authorise signing a labour contract with persons under 16 years old and prohibits using workers under the age of eighteen years for work in hazardous and dangerous labour conditions and work which can be harmful for their health and moral development. In compliance with the ILO Convention (No. 111), discrimination in employment and occupation is banned by the Constitution and the Labour Code. However, the 2010 Human Right Watch Report drew attention to the precarious situation of some migrant workers and the existence of child labour in agriculture and in the tobacco industry.

To comply with the Labour Code, the government and national associations of employers and employees have to sign a General Agreement which establishes their respective rights and obligations related to employment, labour relations and social protection to ensure social consensus. The text of the Agreement which is valid for a period of three years is prepared by the Tripartite Commission based on drafts provided by all parties. The current General Agreement for 2009-11 covers economic policy, labour relations, health and safety, social protection, salaries and living standards, labour market competitiveness and sustainable employment, corporate social responsibility, as well labour rights and guarantees for women and young workers. The next General Agreement for 2012-14 is under preparation. The law “On employment for the population” (Article 12, paragraph 1, subparagraph 5) provides for a flexible vocational education and training system to train and re-train the unemployed, taking into account labour market needs. Similarly the Labour Code (Article 22, paragraph 1, subparagraph 11) stipulates the right for employees to professional training, re-training and advanced training.

In response to the world economic crisis, which has resulted in increasing unemployment in Kazakhstan, the government has developed the so-called “Road Map for encouraging regional employment” and a training strategy to prevent further unemployment. These measures aim to increase the economically active population and reduce the level of unemployment from 6.6% in 2009 to 5.6% in 2010. However, unemployment remains an acute problem, especially in some areas and one-industry towns, which can provoke social and political unrest as evidenced by recent events. The Local Content

Programme concerning foreign companies also seeks to maintain employment and promote participation of Kazakhstan's nationals, especially in managerial and executive jobs. The Programme requires that a minimum 1% of the budget of any investment project should be earmarked for training programmes and workforce development (see Chapter 2).

Kazakhstan has achieved the first three Millennium Development Goals (MDG), including for poverty reduction, and has been focusing on more ambitious "MDG+" targets, notably to halve poverty among the rural population, achieve general secondary education, mainstream gender issues into national planning and budgeting and increase female representation in legislative executive bodies.

Environment

"Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives and standards, take due account of the need to protect environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development."

Source: OECD Guidelines for Multinational Enterprises, Chapter VI.

The updated *Guidelines* develop some of the previous recommendations further, for example, the recommendation to enterprises to improve corporate environmental performance both at the level of the enterprise and, where appropriate, also of its supply chain, and to provide accurate information on their products, for example on greenhouse gas emissions, biodiversity or resource efficiency.

Kazakhstan faces a number of environmental challenges stemming notably from its high energy intensity reflected in significant greenhouse gas emissions. The country is also confronted with problems of land degradation and desertification, specific ecological difficulties in environmentally sensitive areas (such as the Aral Sea and the Caspian Sea), radioactive contamination, industrial pollution resulting from mining and heavy industry and inadequate infrastructure for water and waste. Total environmental protection expenses amount to 1.3% of GDP coming mainly from enterprises whereas public financing represents only 0.5% of annual budget expenditures (UNECE, 2010).

Available international comparisons, such as the 2010 *Environmental Performance Index* (EPI) which covers environmental public health and

ecosystem vitality and evaluates how close countries are to established environmental policy goals, ranks Kazakhstan with the score of 57.3 at the 92nd position out of 163 countries in 2010 (Yale Center for Environmental Law and Policy, 2011). The government has set a goal of improving this rating to increase its environmental sustainability index by 25 percentage points by 2024.

Kazakhstan's national and foreign relations agenda has increasingly integrated environmental protection and sustainable development considerations. The Environmental Code adopted in 2007 is a key legal reference, which embodies the main environmental laws and regulations and the obligations resulting from international environmental agreements to which Kazakhstan is a Party (see Annex D). The Code is based on best international environmental practices, notably as regards improved state environmental control and harmonisation with international environmental standards. The "Concept of Transition to Sustainable Development for 2007-24" incorporates environmental concerns into the country's development strategy which seeks to ensure an adequate balance between economic, social and environmental objectives and takes into account international recommendations, notably the Agenda of the 21st Century. The Concept is implemented by the National Council for Sustainable Development. The Forest Code and the programme "On Protection of the Environment for 2008-10" define the country's goals for combating desertification and land degradation in line with the UN Convention to Combat Desertification (Toxanova, Kudasbayeva, 2010).

In line with the strategic plan for Kazakhstan's development, the Ministry of Environmental Protection (MEP) prepared a draft law on amendments and additions to some legal acts with the objective of encouraging ecologically clean production, reducing emissions and combating effectively environmental offences and crimes. The planned amendments also reflect Kazakhstan's obligations resulting from its ratification of the Kyoto Protocol to the Framework Convention on Climate Change. The law, which was approved by the Parliament and awaits the President's signature, includes the following provisions:

- The Code on Administrative Offences and the Criminal Code will be amended to strengthen administrative and criminal responsibilities and improve law enforcement on ecological offences.
- A national trading system in emission quotas should be created and include: i) assessment of anthropogenic emissions from sources and absorbents of greenhouse gases; ii) issuance of emission quotas/certificates, complying with the Kyoto Protocol; iii) distribution of national carbon unit quotas among economic sectors/concrete economic operators. A newly established national register would ensure accurate records on reduced

emissions put into circulation, stored, obtained, transferred, acquired, abolished or withdrawn from circulation.

The government also envisages the possibility to introduce ecological taxes such as taxes on energy or fuel consumption, water consumption or those on production of hazardous waste. It is also aware of the need to make offshore exploration more environmentally-friendly and to strengthen emergency and preventive measures for environmental pollution risks.

The MEP is the main governmental body responsible for implementing national environmental policy, but several other ministries also have important prerogatives in environment-related areas such as the Ministry of Agriculture responsible for protection of water and forest or the Ministry of Industry and New Technologies for managing radioactivity. In accordance with the commitments under the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, the MEP established a Public Environmental Council, which includes representatives of national environmental NGOs. Territorial environmental protection offices of the MEP also co-operate with local NGOs. The Ecological Forum of Social Organisations, which brings together more than 100 environment-oriented NGOs, is involved in the MEP's activities and some of its members also participated in the Council for Sustainable Development. According to the Environmental Code (Article 60), a public environmental expert review has to be carried out for any business or other activity and social supervision is mandatory in the area of environment protection throughout Kazakhstan (Article 135 of the Code). However, in the view of many NGOs, public consultations on planned legislation are not systematic and public hearings are often seen as a procedural burden rather than a legitimate policy-decision mechanism. Some NGOs also consider that corporate reporting on environmental performance is in many cases window-dressing and difficult to verify by consumers and other stakeholders. Although several specialised NGOs such as Kazakhstan's Association for Sustainable Development are active in this area, further efforts by the public authorities are required to raise public awareness and promote education of environmental matters, especially at the regional and local levels.

Kazakhstan participates in a number of regional environmental initiatives (see Box 4.3), including the Regional Environmental Centre for Central Asia (CAREC) established in 2001 with its headquarters in Almaty and offices in four other Central Asian countries (Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan). The main mission of CAREC is to promote multi-sectoral co-operation in addressing environmental problems in Central Asia, attract advanced knowledge, develop best international practices and technologies in environmental management and sustainable development and foster the role of civil society in this area.

Box 4.3. **Kazakhstan's participation in regional environmental initiatives**

The **Astana "Green Bridge" Initiative** is an interregional programme developed by the government of Kazakhstan in co-operation with ESCAP and UNECE establishing a partnership for implementing green growth and sharing best practice in using economic and technical instruments for environmental management. Its ambitious agenda, based on the Johannesburg Plan of Implementation of the World Summit on Sustainable Development and the Millennium Development Goals covers promotion of the eco-efficient use of natural resources, low carbon development and adaptation to climate change and sustainable urban development. The project should also contribute to the World Summit on Sustainable Development to be held in June 2012 in Rio de Janeiro. To facilitate the transition to a green economy, the initiative focuses on five areas:

- Strengthening national and international governance.
- Developing an information infrastructure, raising awareness and education.
- Promoting green business and green technologies.
- Developing financial and economic mechanisms.
- Improving standards for a green economy.

Within the framework the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) promoting co-operation for protection and sustainable management in this area, the 7th Ministerial Conference "Environment for Europe" (Astana, 21-23 September 2011) agreed on the **Astana Water Action for 2012-15**. This initiative aims to improve the status of water and water-related ecosystems through their more sustainable management. The proposed actions include the establishment of monitoring and information management, assessment and research based on a set of indicators for water quantity and quality; identification of sources of pollution such as agriculture, untreated wastewater from industries and the introduction of labelling to inform consumers.

Source: UNECE Seventh "Environment for Europe" Ministerial Conference, Astana 21-23 September 2011, www.unece.org/env/efe/Astana/documents.html.

Combating bribery, bribe solicitation and extortion

“Enterprises should not, directly or indirectly, offer, promise, give or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortions.”

Source: OECD Guidelines for Multinational Enterprises, Chapter VII.

The *Guidelines* chapter dealing with bribery has been extended in the 2011 update to cover bribe solicitation and extortion and third parties such as agents and other intermediaries, representatives, distributors, consortia, contractors and suppliers. It also now includes the obligation for enterprises to develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery.

Corruption remains a serious challenge in Kazakhstan. The economic damage resulting from corruption and economic crimes is estimated to amount annually to several KZT tens of billions. According to information provided by Kazakhstan’s authorities, the financial police agencies detected 1 568 corruption cases in 2010, including bribery (441 cases) and abuse/misuse of official powers (244).

Although Kazakhstan’s score in Transparency International’s *Corruption Perceptions Index* has improved from 2.2 in 2008 to 2.9 in 2010, its international ranking is still low (105th position among 178 countries) reflecting the persistence of many problems, notably in the judiciary, police and customs administration, in protecting property rights as well as in land registration and construction permits proceedings. The WEF’s *Global Competitiveness Report* for 2011-12 identifies corruption as the most problematic factor for doing business in Kazakhstan and notes only limited progress in this area since in 2011 the country’s rank remained the same (72 out of 142 countries) as the previous year (WEF, 2011). Both the Kazakhstani authorities and outside observers see public procurement, use of subsoil resources and land, construction, and customs and tax administration as the most vulnerable areas for corruption.

Following the State Programme for the Fight against Corruption for 2006-10, which, according to the government was successfully implemented, the new anti-corruption Sectoral Programme for 2011-15 was adopted in March 2011.³ In addition to strengthening international co-operation and improving national legislation on anti-corruption, the Programme envisages increasing the effectiveness of the state authorities in reducing the risk of

corruption, raising awareness of corruption issues and shrinking the shadow economy.

Kazakhstan's national legislation addresses different aspects of corruption, notably the law "On combating corruption", adopted on 2 July 1998 and the 1999 law "On Public Service", which defines the status, rights and responsibilities of civil servants and regulatory state agencies. It stipulates for example that a civil servant has to inform promptly his/her hierarchy if he/she is aware of corruption cases. The 2007 law on improving the anti-corruption fight provides for confiscation of property obtained by illegal means and transferred to a third party. Officials dismissed for corruption offences are banned for life from holding any posts in state bodies or organisations.

The Code of Criminal Procedures and the law "On State Protection of Persons Participating in Criminal Procedures" both deal with safety issues for parties to criminal proceedings related to organised crime and corrupt practices. They set a state system of legal rights and interests' protection for criminal procedure participants, their family members and relatives. Following these provisions, the Anti-corruption Agency granted protection in 2009 to 274 participants in cases involving economic crimes and corruption, including 92 witnesses and 61 victims.

Money laundering is a criminal offence and is dealt with in the law "On counteracting legalisation (money laundering) of revenues from illegal activity and terrorism financing". The Financial Monitoring Committee under the Ministry of Finance is responsible for ensuring legal compliance in this area. Each state body has the obligation to counteract corruption under the oversight and leadership of the Agency for Combating Economic and Corruption Crimes (Financial Police), the main state anti-corruption body in Kazakhstan (see Box 4.4).

Other measures such as the "e-government" programme can play an important role in fighting corruption as it encourages information exchange and feed-back between the government and the public. In line with new requirements, each state body has to put in place its own website accessible through the governmental portal, which should include personal blogs of leaders/heads of ministries and agencies. The draft law on access to public information, which was developed in co-operation with NGOs and is expected to be adopted in 2012, could further improve the current situation, especially if it defines clearly the terms of public *versus* restricted information and specifies the timeframe for replies by public authorities.

Kazakhstan has also reinforced its international co-operation for combating corruption. It ratified the UN Convention against Corruption and is in the process of adapting its national legislation in compliance with its provisions. Since December 2004, the country has participated in the OECD's

Box 4.4. **Kazakhstan's Agency for Combating Economic and Corruption Crimes (Financial Police)**

The Agency (Financial Police), established in 2007, is the key state body responsible for inter-agency co-ordination and legal oversight to prevent, detect, suppress, investigate and resolve economic, financial and corruption crimes and offences. The Agency's Chairperson and his deputies are appointed and dismissed by the President, whereas heads of the departments of the central office and in the regions are appointed by the Chairperson. The Agency, which reports directly to the President, performs the following tasks:

- ensuring the country's economic safety, and protecting the legal rights and interests of business, society and the state;
- preventing, detecting, suppressing, investigating and resolving economic, financial and corruption crimes and offences;
- participating in the development of the government's anti-corruption policy and its implementation;
- collaborating internationally on issues related to the authority of financial police bodies.

The Agency is responsible for implementing the state programmes for the fight against corruption, carrying awareness-raising campaigns, ensuring involvement of civil society and organising anti-corruption education in both the public and private sectors. It also has the mandate for developing co-operation with international organisations, including the UN and the OECD, as well as NGOs such as Transparency International and the International Tax and Investment Center.

More information on the Agency and its activities, see www.finpol.kz/rus/about/law.

Istanbul Anti-corruption Action Plan and was subject to two rounds of monitoring reports in September 2007 and September 2011. The main recommendations addressed in the second report concern the transparent and unrestricted participation of civil society in monitoring and implementing the state anti-corruption programme, developing a national methodology for evaluating corruption and harmonising national legislation with international standards and best practices. Enhancing judicial independence in Kazakhstan would require reforming the status, composition and procedure for formation of the Supreme Judicial Council, reviewing procedures for selecting and dismissing judges, as well as their remuneration and disciplinary liability. The report also contains recommendations concerning public procurement legislation and practices to avoid opportunities for violations in this field and the need to improve information disclosure, internal and external audit and financial control to ensure transparency of management of national holdings (OECD, 2011b).

Consumer interests

“When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide.”

Source: *OECD Guidelines for Multinational Enterprises*, Chapter VIII.

The updated *Guidelines* put specific emphasis on promoting consumer education by enterprises in areas that relate to their business activities to help consumers make informed decisions, better understand the economic and social impact of their decisions and support sustainable consumption.

Kazakhstan’s *Civil Code* and the first 1991 law “On consumer protection” recognise a consumer’s right to full and reliable information on goods and services and to reimbursement for damages caused by any defects. Producers are obliged to ensure the required quality and to inform consumers on possible defects. The new Consumer Protection Law adopted in May 2010 strengthens protection of consumer interests and rights. There is no special agency for consumer protection in Kazakhstan, but the government plans to create a specialised state body under the Antimonopoly Agency to design and control enforcement of consumer protection policy. In its 2010 report, the Kazakhstan National Consumers League noted that most consumers’ complaints concern medical, educational and banking services, tourist companies and the quality of food products. It also observed that most of registered complaints have been resolved without having to resort to judicial procedures.

Science and technology

“Enterprises should endeavour to ensure that their activities are compatible with the science and technology policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.”

Source: *OECD Guidelines for Multinational Enterprises*, Chapter IX.

This chapter of the *Guidelines* aims to promote, within the limits of economic feasibility, the diffusion by multinational enterprises of the fruits of research and development activities within the countries in which they operate, contributing thereby to the innovative capacities of host countries.

Several indicators point to the need to enhance the contribution of science and technology to economic development in Kazakhstan. The country's expenditure on science and research represent only 0.2% of GDP, which is below the level generally recommended for countries at a similar stage of development (1-1.5% of GDP) and also lower than in neighbouring countries such as the Russian Federation (1%). The number of patents issued in Kazakhstan also remains modest (1 671 annually). Measured by the World Bank *Knowledge Economy Index*, which takes into account a number of variables, including economic incentives and the institutional regime; education; innovation; information and communications technologies, Kazakhstan's score is below the regional average and the country ranks 20th among 27 European and Central Asian countries (World Bank, 2009).

The goal to intensify science, technology and innovation development figures prominently in most recent governmental programmes, for example in the Government's Strategy of Innovative Industrial Development for 2003-15. The National Innovation Fund established in 2003 is in charge of promoting innovation-related activities and providing support for the development of technology intensive enterprises. The 2010-14 National Programme for Enhancing Industrial and Innovative Development sees innovation and assistance to technological modernisation as a critical element of the country's economic diversification strategy. It sets up a range of quantitative targets such as increasing the number of international patents and the share of innovative enterprises. The Programme also foresees substantial state financial support for innovation, adoption or amendments of relevant laws and the establishment of a Council for Technology Policy to design and implement innovation policy. However, government programmes do not address sufficiently the main weakness of Kazakhstan's current innovation policies: low research and development expenditures of the private sector, including foreign established firms.

Establishment of a National Contact Point

“Adhering countries shall set up National Contact Points to further the effectiveness of the *Guidelines* by undertaking promotional activities, handling related enquiries and contributing to the resolution of issues that arise relating to the implementation of the *Guidelines* in specific instances... The business community, worker organisations, other non-governmental organisations and other interested parties shall be informed of the availability of such facilities.

As a result of the 2011 update and amendments to the OECD Council Decision concerning National Contact Points (NCPs) and related Procedural Guidance, the role of the NCP has been reinforced, notably as regards their contribution to the resolution of issues that arise relating to implementation of the *Guidelines*. The 2011 Procedural Guidance is also more explicit as regards institutional arrangements and emphasises that the NCP should be able to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government.”

Source: *Implementation Procedures of the OECD Guidelines*.

The governments adhering to the *OECD Guidelines* have to establish a National Contact Point (NCP), which acts as a forum for discussion of all matters relating to the *Guidelines*. Since many of these issues are relatively new or pose specific problems in Kazakhstan, such a forum could be particularly useful to raise awareness and foster discussions between the government and various stakeholders, including the business community, trade unions and specialised non-governmental organisations. Furthermore, the Procedural Guidance for institutional arrangements of NCPs and for their main activities, notably information and promotion and the resolution of issues relating to implementation of the *Guidelines*, provides several indications on how to ensure that NCPs operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. Complying with these principles could also contribute to improve the content and modalities for public-private dialogue on responsible business conduct, which is still underdeveloped in Kazakhstan.

Notes

1. Due diligence is understood as the “process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems”. See Commentaries on Chapter II, General Policies, *OECD Guidelines 2011*.
2. The term “business relationship” includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services. See Commentaries on Chapter II, General Policies, *OECD Guidelines 2011*.
3. This section is based on the Second Round Monitoring Report on Kazakhstan adopted at the Istanbul Action Plan plenary meeting on 29 September 2011 at the OECD headquarters in Paris (OECD, 2011b).

Bibliography

- EITI (Extractive Industries Transparency Initiative, 2011), *Kazakhstan, candidate country*, see: <http://eiti.org/Kazakhstan>.
- Human Right Watch (2010), *Hellish Work: Exploitation of Migrant Tobacco Workers in Kazakhstan*, www.hrw.org/news/2010/07/14/kazakhstan.
- Human Right Watch (2011), *World Report 2011, Country Note Kazakhstan*, available at: www.hrw.org/world-report-2011.
- UNECE (2010), *Environmental Performance Review of Kazakhstan*, United Nations.
- OECD (2011a), *OECD Recommendations on Due Diligence Guidance for Responsible Business Chains of Minerals from Conflict-Affected and High-Risk Areas*, www.oecd.org/dataoecd/62/30/46740847.pdf.
- OECD (2011b), *Second Round of Monitoring Report of Kazakhstan*, adopted at the Istanbul Anti-Corruption Action Plan meeting on 29 September 2011, available at: www.oecd.org/dataoecd/17/28/48908325.pdf.
- Transparency International (2010), *Corruption Perception Index*, www.transparency.org/policy_research/surveys_indices/cpi/2010/results.
- Toxanova, A., D. Kudasbayeva (2010), *Environmental and Sustainable Development in the Republic of Kazakhstan*, Astana Economic Forum, www.aef.kz.
- UN Global Compact (2011), *Participants and Stakeholders*, www.unglobalcompact.org.
- World Bank (2009), *Knowledge Economy Index*, http://info.worldbank.org/etools/kam2/KAM_page5.asp.
- World Economic Forum (2011), *The Global Competitiveness Report 2011-2012*, <http://reports.weforum.org/global-competitiveness-2011-2012>.
- Yale Center for Environmental Law and Policy (2011), *Environmental Performance Index*, <http://epi.yale.edu/Countries>.

ANNEX A

List of Kazakhstan's Exceptions to National Treatment in the Meaning of the OECD Declaration on International Investment and Multinational Enterprises

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Agricultural land and forests

Foreign natural and legal persons and foreign-established enterprises with the share of foreign equity participation more than 50% cannot own private land plots for agricultural land and forestry purposes.

Authority: Article 23, Land Code, 20 June 2003.

Telecommunications services

Foreign investors cannot directly or indirectly own, use, dispose of or manage an aggregate of more than 49% of the voting shares in a legal entity supplying long-distance and international telecommunications services and owning the terrestrial (cable, including optical fibre and radio relay) communications lines.

Authority: Article 22-1, Law on National Security, 26 June 1998.

Mass media

Foreign investment in mass media sectors (including news agencies) is only permitted up to 20% of equity.

Authority: Article 22, Law on National Security, 26 June 1998.

Air transport

Foreign investment in the air transport sector is allowed up to 49% in companies involved in regular international and domestic flights (for both passenger and cargo services).

Authority: Article 74 of the Law No. 339-IV ZRK “Concerning use of air space of the Republic of Kazakhstan and air activity”, 15 July 2010.

Pension funds

Foreign investment shall not exceed 25% of the consolidated authorised capital of all open stock pension funds.

Authority: Article 36, Law “On pension provision in the Republic of Kazakhstan”, 1997.

Pension fund investment management services

The share of foreign investors in the total equity capital of pension fund investment management companies may not exceed 50% of the aggregate stated equity capital of all pension fund investment management companies in Kazakhstan.

Authority: Article 52, Law “On pension provision in the Republic of Kazakhstan”, 1997.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

ANNEX B

List of Measures Notified by Kazakhstan for Transparency in the Meaning of the OECD Declaration and Decisions on International Investment and Multinational Enterprises

A. Measures reported for transparency at the level of national government

I. Measures based on public order and essential security considerations

a) Investments by established foreign-controlled enterprises

Agricultural land, immediately adjacent (3-km zone) to the protected zone of the State Border of the Republic of Kazakhstan, available only to citizens and legal entities of the Republic of Kazakhstan, unless otherwise stipulated by the legislation of the Republic of Kazakhstan on state borders.

Authority: Article 170, Land Code dated 20 June 2003 N 442.

II Other measures reported for transparency

a) Corporate organisation

Trans-sectoral: Foreign executives and technical experts are limited to 50% of all executives and experts, and managers, specialists and skilled workers are limited to 30% of all such workers.

Authority: Amendment to the Rules “On Determining the Quota, Conditions and Procedures of Issuing to Employers of Permits to Attract Foreign Labour Force into the Republic of Kazakhstan”, 2011

Pension funds: Kazakhstan citizens shall comprise not less than one third of the board of directors in an open stock pension fund.

Authority: Law “On pension provision in the Republic of Kazakhstan”, 1997.

B. Measures reported for transparency by territorial subdivisions

None.

C. Private or mixed monopolies

At the national level

I. Public monopolies

- transport of oil and/or oil products via trunk pipelines;
- storage, transport of gas or gas condensate via trunk and/or distribution pipelines, operation of gas distribution plants and related gas distribution pipelines;
- electric power transmission and distribution;
- thermal power production, transmission, distribution and supply;
- technical dispatching of electric power grid output and consumption;
- trunk railway networks;
- access roads;
- air navigation;
- ports, airports;
- telecommunications provided in the absence of a competitive communication operator due to technological impossibility or economic inefficiency of such services except for general telecommunication services;
- provision or lease of cable systems and other fixed assets related to connection of telecommunication networks to the public telecommunication networks;
- water-utilisation and sewer systems;
- public postal services;
- fishing for sturgeon and purchase, possession or exporting of caviar and other products;
- inspections related to aviation activities;
- activities related to drugs and psychotropic agents.

II. Private monopolies

None.

III. Concessions

Exploration and exploitation of oil and gas.

At the level of territorial subdivisions

None.

ANNEX C

*Bilateral Agreements on Mutual Protection
of Investments Signed by Kazakhstan*

	Date of signature	Date of entry into force
OECD member countries		
Austria	13 Jan. 2010	..
Belgium-Luxembourg Union	16 Apr. 1998	06 Feb. 2001
Czech Republic	08 Oct. 1996	02 Apr. 1998
	25 Nov. 2010	..
Finland	9 Jan. 2007	..
France	3 Feb. 1998	..
Germany	22 Sept. 1992	10 May 1995
Greece	26 June 2002	..
Hungary	7 Dec. 1994	3 Mar. 1996
Israel	27 Dec. 1995	19 Feb. 1997
Italy	22 Sept. 1994	12 July 1996
Korea	20 Mar. 1996	26 Dec. 1996
Netherlands	27 Nov. 2002	1 Aug. 2007
Poland	21 Sept. 1994	25 May 1995
Slovak Republic	21 Nov. 2007	..
Spain	23 Mar. 1994	22 June 1995
Sweden	25 Oct. 2004	1 Aug. 2006
Switzerland	12 May 1994	13 May 1998
Turkey	1 May 1992	10 Aug. 1995
United Kingdom	23 Nov. 1995	23 Nov. 1995
United States	19 May 1992	12 Jan. 1994
Non-OECD countries		
Azerbaijan	16 Sept. 1996	..
Bulgaria	15 Sept. 1999	20 Aug. 2001
China	10 Aug. 1992	13 Aug. 1994
Egypt	14 Feb. 1993	8 Aug. 1996
Georgia	17 Sept. 1996	24 Aug. 1998
India	9 Dec. 1996	26 July 2001
Iran	16 Jan. 1996	3 Apr. 1999
Jordan	30 Nov. 2006	..
Kuwait	31 Aug. 1997	..
Kyrgyzstan	8 Apr. 1999	..
Latvia	8 Oct. 2004	21 Apr. 2006
Lithuania	15 Sept. 1994	25 May 1995
Malaysia	27 May 1996	..
Mongolia	2 Dec. 1994	3 Mar. 1995
Pakistan	8 Dec. 2003	..
Qatar	4 Mar. 2008	..
Romania	25 Apr. 1996	5 Apr. 1997
	02 Mar. 2010	..
Russian Federation	6 July 1998	11 Feb. 2000
Serbia	7 Oct. 2010	..
Ukraine	17 Sept. 1994	9 Jan. 1997
Uzbekistan	2 June 1997	8 Sept. 1997
Vietnam	15 Sept. 2009	..

Source: Government of Kazakhstan, UNCTAD.

ANNEX D

*Kazakhstan's Participation in International
Organisations and Adherence to International
Agreements and Conventions*

Name of organisation/convention/agreement	Document of the Republic of Kazakhstan confirming accession/ratification
Membership in international organisations	
Food and Agricultural Organisation of the United Nations	
International Labour Organisation	
International Monetary Fund	
United Nations Conference on Trade and Development	
United Nations Educational, Scientific and Cultural Organisation	
World Bank	
World Health Organisation	
World Intellectual Property Organisation	
World Trade Organisation	
Eurasian Patent Organization (EAPO)	
European Patent Office (EPO)	
International investment	
1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards	October 1995
1965 Washington Convention on the Settlement of Investment Disputes between the States and Nationals of Other States	July 2004
1961 Geneva European Convention on the Foreign Trade Arbitration	October 1995
1998 Moscow Agreement on the Mutual Execution of Decisions of Arbitration, Commercial and Economic Courts in the Territories of the Commonwealth Members States	December 1999
1985 Seoul Convention on Establishment of Multilateral Investment Guarantee Agency (MIGA)	December 2001
Intellectual property rights	
Stockholm Convention Establishing the World Intellectual Property Organization	5 February 1993
Paris Convention for the Protection of Industrial Property	5 February 1993
Madrid Agreement on International Registration of Trademarks	5 February 1993
Patent Cooperation Treaty	5 February 1993
Universal Copyright Convention	21 December 1991
Berne Convention for the Protection of Literary and Artistic Works	10 November 1998
Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms	7 June 2000
Strasbourg Agreement Concerning the International Patent Classification	16 November 2001
Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks	16 November 2001
Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure	16 November 2001
Locarno Agreement Establishing an International Classification for Industrial Designs	31 January 2002
Trademark Law Treaty	4 February 2002
Copyright Treaty of the World Intellectual Property Organization	16 April 2004
World Intellectual Property Organization Performances and Phonograms Treaty	16 April 2004
Protocol to the Madrid Agreement on International Registration of Trademarks	27 May 2010
Nairobi Treaty on the Protection of the Olympic Symbol	9 November 2010

Name of organisation/convention/agreement	Document of the Republic of Kazakhstan confirming accession/ratification
Human rights	
Universal Declaration of Human Rights	
International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Family	
Convention against Torture and other Cruel Inhuman or Degrading Treatment and Punishment	
International <i>Covenant</i> on Economic, Social and Cultural Rights	
International Covenant on Civil and Political Rights	
Convention on the Rights of the Child	
International Convention on the Elimination of all Forms of Racial Discrimination	
Convention on Political Rights of Women	
Labour	
ILO Forced Labor Convention, 1930 (No. 29)	Law No. 120-II (14.12.2000)
ILO Labor Inspection Convention, 1947 (No. 81)	Law No. 194 (7.05.2001)
ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)	Law No. 29-II (30.12.1999)
ILO Employment Service Convention, 1948 (No. 88)	Law No. 119-II (14.12.2000)
ILO Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	Law No. 118-II (14.12.2000)
ILO Forced Labor Convention, 1930 (No. 29)	Law No. 120-II (14.12.2000)
ILO Equal Remuneration Convention, 1951 (No. 100)	Law No. 115-II (14.12.2000)
ILO Abolition of Forced Labor Convention, 1957 (No. 105)	Law No. 117-II (14.12.2000)
ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	Law No. 444-1 (20.07.1999)
ILO Employment Policy Convention, 1964 (No. 122)	Law No. 286-1 (9.11.1998)
ILO Labor Inspection (Agriculture) Convention, 1969 (No. 129)	Law No. 195 (7.05.2001)
ILO Workers' Representatives Convention, 1971 (No. 135)	Law No. 13-II (30.12.1999)
ILO Tripartite Consultation (International Labor Standards) Convention, 1976 (No. 144)	Law No. 12 (30.12.1999)
ILO Working Environment (Air pollution, Noise and Vibration) Convention, 1977 (No. 148)	Law No. 10 (26.06.1996)
ILO Occupational Safety and Health Convention, 1981 (No. 155)	Law No. 7(13.06.1996)
ILO Safety and Health in Construction Convention, 1988 (No. 167)	Law No. 263 (19.06.2007)
ILO Worst Forms of Child Labor Convention, 1999 (No. 182)	Law No. 367 (26.12.20020)
ILO Asbestos Convention, 1986 (No. 162)	Law
Environment	
WMO Convention, 11 November 1947 (World Meteorological Organization)	Resolution of the Council No. 1791-XII 918.12. 1992)
Rio CBD Convention on Biological Diversity (1992)	Resolution of the Cabinet of Ministers No. 918 (19.08.1994)
Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques	Resolution of the Council No. 301-XIII (20.02.1995)
United Nations Framework Convention on Climate Change (UNFCC) Rio, 11 June 1992	Decree of the President No. 2260 (04.05. 1995)
Montreal Protocol about substances affecting ozone layer, 6 September 1987	Law No. 176 (30.10.1997)
Vienna Convention for the Protection of the Ozone Layer, 22 March 1985	Law No.177-I (30.10.1997)

Name of organisation/convention/agreement	Document of the Republic of Kazakhstan confirming accession/ratification
Convention on the Environmental Impact Assessment in a Transboundary Context. Espoo (Finland), 25 February 1991	Law No. 86-II of (21.10.2000)
Convention on the Long-Range Transboundary Air Pollution. Geneva, 10 November 1979	Law No. 89-II (23.10.2000)
Convention on Transboundary impact resulted from industrial accidents	Law No. 91-II (23.10.2000)
Aarhus Convention (1998) on access to environmental information	Law No. 92-II (23.10.2000)
Montreal Protocol as amended. London, 27-29 June 1990	Law No. 191-II (07.05.2001)
Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, 20-22 March 1989	Law No. 389-II (10.02.2003)
Convention to Combat Desertification.	Law No. 149-1 (07.07.1997)
Convention on the Wetlands of International Importance Especially as Wildlife Habitat (as amended by the Paris Protocol as of 3 December 1982, as well as in Regina on 28 May 1987)	Law No. 94-III (13.12.2005)
The Framework Convention on the Protection of the Marine Environment of the Caspian Sea (Teheran, 4 November 2003)	Law No. 97-III (13.12.2005)
Stockholm Convention on Persistent Organic Pollutants (POPs), 22 May 2001	Signed on 2 May 2001; ratified in 2007
PIC Rotterdam Convention on Prior Informed Consent (1998) (on primary feasible consent as related to definite hazardous chemicals and pesticides in international trade)	Ratified in 2007
Bonn Convention on Conservation of Migratory Species of Wild Animals, 23 June 1979	Law No. 96 (13.12.2005)
On Certain Measures for Implementation of the Framework Convention on the Protection of the Marine Environment of the Caspian Sea	Resolution of the Government No. 749 (28.08.2007)
Convention on International Trade in Endangered Species. (CITES), Washington, 3 March 1973	Law No. 372-1 (6.04.1999)
Convention on the Protection and Use of Transboundary Watercourses and International Lakes). Helsinki, 17 March 1992.	Law No. 94-II (23.10.2000)
Lisbon Agreement (1990) to the Energy Charter 17 December 1994	Decree of the President No. 2537 (18.10.1995)
Convention Concerning the Protection of the World Cultural Heritage. Paris, 16 November 1972	
International Convention for the Prevention of Pollution from Ships	Resolution of the Cabinet No. 244 (4.05.1994)
International Convention on Civil Liability for Oil Pollution Damage. Brussels, November 29, 1969	Resolution of the Cabinet No. 244 (4.05.1994)
UN Framework Convention on Climate Change. Kyoto, 11 December 1997	Decree of the President No. 84 (12.05.1999)
International Convention on Civil Liability for Oil Pollution Damage, 1969	Resolution of the Cabinet of Ministers No. 244 (04.03.1994)
International Convention for the Prevention of Pollution from Ships, as amended by 1978 Protocol	Resolution of the Cabinet of Ministers No. 244 904.03.1994)
Convention Concerning the Protection of the World Cultural Heritage	Accession and ratification: 29.07.1994
Lisbon Agreement (1990) to the Energy Charter	Decree of the President No. 2537 (18.10.1995)
Convention on International Trade in Endangered Species (CITES)	Law No. 372-1 (06.04.1999)

Name of organisation/convention/agreement	Document of the Republic of Kazakhstan confirming accession/ratification
Convention on Transboundary impact resulted from industrial accidents	Law No. 91-II (23.10.2000)
Convention on the Protection and Use of Transboundary Watercourses and International Lakes)	Law No. 94-II (23.10.2000)
Corruption	
United Nations Convention against Corruption	
United Nations Convention against Transnational Organized Crime	

ANNEX E

*International Arbitration Cases Involving
Kazakhstan*

	Case	Applicable Law	Subject matter	Rules	Status of proceedings	Amount awarded
2010	Ascom S.A. v. Kazakhstan	Energy Charter Treaty	Oil fields	Stockholm Chamber of Commerce (SCC)	Pending	n.a.
2010	AES Corporation and Tau Power B.V. v. Kazakhstan (ICSID case No. ARB/10/16)	Energy Charter Treaty	Power Facilities and Trading Companies	ICSID	Pending	n.a.
2009	GEM Equity Management AG v. Kazakhstan	BIT Kazakhstan – Austria	Banking Enterprise	UNCITRAL	Pending	n.a.
2009	KT Asia Investment Group B.V. v. Kazakhstan (ICSID case No. ARB/09/8)	BIT Kazakhstan – the Netherlands	Banking enterprise	ICSID	Pending	n.a.
2008	Caratube International Oil company LLP v. Kazakhstan (ICSID case No. ARB/08/12)	BIT Kazakhstan – United States	Oil exploration	ICSID	Pending (interim measures decision)	n.a.
2007	Liman Caspian Oil BV and NCL dutch Investment BV v. Kazakhstan (ICSID case No. ARB/07/14)	Energy Charter Treaty	Exploration, extraction of hydrocarbons	ICSID	Award rendered in 2010; not publicly available.	n.a.
2005	Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Kazakhstan (ICSID case No. ARB/05/16)	BIT Kazakhstan – Turkey	Telecommunications	ICSID	Award rendered in 2008, in favour of the investor (+ decision of an annulment committee in 2010).	USD 125 million (+ costs and interest)
2001	CCL Oil v. Kazakhstan (SCC case 122/2001)	BIT Kazakhstan – United states	Oil investment	SCC	Award rendered in 2004, in favour of the State; Publicly available.	–
2001	AIG Capital Partners, Inc. and CJSC tema real estate Company v. Kazakhstan (ICSID case No. ARB/01/6)	BIT Kazakhstan – United states	Building of residential housing complex	ICSID	Award rendered in 2003, in favour of the investor; <i>The award has not been enforced.</i>	USD 9.95 million plus costs and interest; <i>Kazakhstan did not satisfy the award.</i>
1996	Biederman v. Kazakhstan	BIT Kazakhstan – United states	Oil concession	SCC	Award rendered in 1999, in favour of the investor; Not publicly available.	USD 8.9 million

Sources: www.unctad.org; www.encharter.org.

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