



KAZAKHSTAN
INVESTMENT CLIMATE STATEMENT
2015

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Executive Summary

Kazakhstan has made significant progress toward creating a market economy since it gained independence in 1991, and has achieved considerable results in its efforts to attract foreign investment. As of September 30, 2014, total foreign investment in Kazakhstan reached USD 211.5 billion. Of that total, net Foreign Direct Investment (FDI) constituted USD 129.3 billion, with portfolio and other investments comprising the remaining USD 82.2 billion. The majority of foreign investment is in the oil and gas sector, and the United States is one of the leading sources of investment capital with around USD 14 billion of FDI invested in Kazakhstan from 2005-Sept 30, 2014.

The government of Kazakhstan continues to make incremental progress toward its goal of diversifying the country's economy away from an overdependence on the extractive industries by improving the investment climate. Kazakhstan's efforts to remove bureaucratic barriers have yielded some modest results. In the World Bank's 2015 Ease of Doing Business Report, Kazakhstan ranked 77 out of 189. The 2014 Ernst & Young attractiveness survey ranked Kazakhstan as the second leading CIS market for investment, saying that "the country's 'brand perception' is growing strong." In spite of these changes, corruption and bureaucracy remain challenges for foreign investors working in Kazakhstan. American firms seeking to invest in Kazakhstan should conduct thorough due diligence and retain legal counsel prior to any investment.

The government maintains a dialogue with international investors and is committed to improving the investment climate. President Nazarbayev himself has publicly pledged to create a favorable climate for foreign investors in order to spur domestic innovation and the use of new technologies. In June 2014, Nazarbayev endorsed amendments to investment legislation that extends preferences to investors to develop the non-extractive sectors of Kazakhstan's economy. The country's world-class hydrocarbon and mineral reserves continue to form the backbone of the economy, and foreign investment continues to flow into these sectors. Despite this investment growth, concerns remain about the government's tendencies to challenge contractual rights to legislate preferences for domestic companies, and to create mechanisms for government intervention in foreign companies' operations, particularly in procurement decisions. Together with vague and contradictory legal provisions that are often arbitrarily enforced, these negative tendencies feed the perception that Kazakhstan's investment environment is subpar. Kazakhstan's government is optimistic that further integration with Russia and Belarus through the Eurasian Economic Union (EAEU) will make the country more attractive to foreign investors by offering access to those countries' markets. Although Kazakhstan has, thus far, not realized the gains it sought when it created the customs union with Russia and Belarus, economic integration will likely continue to deepen within the EAEU.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Kazakhstan has attracted significant foreign investment since independence and would like to see more come into the country. As of December 31, 2014, foreign direct investment in Kazakhstan totaled USD 132.6 billion, primarily in the oil and gas sector. Kazakhstan is widely considered

to have the best investment climate in the region, and numerous international firms have established regional headquarters in Kazakhstan.

Although Kazakhstan's government has incrementally improved the business climate for foreign investors overall, its efforts to support local content requirements have restricted foreign investment, especially in the extractive sectors.

Other Investment Policy Reviews

Kazakhstan announced in 2011 its desire to join the Organization of Economic Cooperation and Development (OECD). To meet OECD requirements, the government will need to amend its investment legislation. OECD presented its Investment Policy Review on Kazakhstan in March 2012. [Http://www.oecd.org/countries/kazakhstan/kazakhstan-investmentpolicyreview-oecd.htm](http://www.oecd.org/countries/kazakhstan/kazakhstan-investmentpolicyreview-oecd.htm). In brief, the OECD review recommended corporate governance reforms at state-owned enterprises, increased private participation in infrastructure, easier access to agricultural land for foreign investors, and better financing support for small and medium-sized enterprises (SMEs). In January 2015, Kazakhstan and OECD signed a Memorandum of Understanding for a two-year Country Program, which will support an ambitious set of reforms of Kazakhstan's policies and institutions.

Laws/Regulations of Foreign Direct Investment

The following legislation affects foreign investment in Kazakhstan: 1) the 2003 Law on Investments; 2) the Civil Code; 3) the Tax Code; 4) the Customs Code and the Customs Code of the Customs Union (in force since July 2010); 5) the Law on Currency Regulation and Currency Control; and 6) the Law on Government Procurement. These laws provide for non-expropriation, currency convertibility, guarantees of legal stability, transparent government procurement, and incentives for priority sectors. Inconsistent implementation of these laws and regulations at all levels of the government, combined with a tendency for courts to favor the government, create significant obstacles to investors.

The 2003 Law on Investments established a single investment regime for domestic and foreign investors, and, in principal, codifies non-discrimination for foreign investors. It guaranteed the stability of existing contracts at the time of its passage, with the qualification that new contracts will be subject to amendments in domestic legislation, certain provisions of international treaties, and domestic laws dealing with "national and ecological security, health, and ethics." The Law on Investments contains incentives and preferences for government-determined priority sectors, providing tax and customs duty exemptions and in-kind grants which are more fully explained in Part 5.2 (Performance Requirements and Investment Incentives). The Law also provides for dispute settlement through negotiation, use of Kazakhstan's judicial process, and international arbitration. In general, U.S. investors have expressed concern about the Law's narrow definition of investment disputes and its lack of clear provisions for access to international arbitration.

The tax code that Kazakhstan adopted in 2009 lowered corporate income and value-added taxes (VAT), replaced royalty payments with a mineral extraction tax, and introduced excess profit and rent taxes on the export of crude oil and natural gas. Accordingly, the corporate income tax rate has dropped from 30% to 20%. The government gradually reduced VAT from 16% in 2006

to 12% in 2009, where it is expected to remain in the near term. Kazakhstan applies a flat 11% social tax to employers based on employees' earnings, and a personal income tax rate of 10%. The tax rate for non-residents varies between 5% and 20% depending on the type of income. Subsoil concerns may be subject to additional taxes, such as signing bonuses, commercial discovery bonuses, and historical cost reimbursements.

Experts consider Kazakhstan's tax laws among the most comprehensive in the former Soviet Union. It is common for Kazakhstan's tax authorities to invoke the national Tax Code provisions over International Financial Reporting Standards (IFRS). At times this can lead to double taxation, especially when employing IFRS standards for deducting expenses between a company's home office and its branch office in Kazakhstan (see Section 4 on Dispute Settlement).

In 2001, Kazakhstan adopted transfer pricing legislation which gives tax and customs officials the authority to monitor export-import transactions, and which since 2009 have codified the "arm's length principle" embraced by the Organization for Economic Cooperation and Development (OECD). 2010 amendments to the law further clarified the rights and liabilities of government agencies by providing private parties contracting with the government the right to justify applied prices to state agencies and to appeal tax inspection results. According to the law, the Ministry of Finance has the right to monitor companies' transactions by surveying the prices of transactions and analyzing companies' reports. Foreign investors have noted the new law is more closely aligned with international standards, but remain concerned the law will be applied, not only to transactions with related parties, but all international transactions.

Industrial Promotion

The Concept for Industrial and Innovative Development 2015-2020 and the government's plan for attracting foreign and domestic investments comprise an industrial strategy aimed at diversifying Kazakhstan's economy away from its overdependence on extractive industries. In order to facilitate the work of foreign investors, especially in targeted non-extractive industries, the government has announced a set of industries that feature tax waivers and simplified procedures for acquiring visas and work permits.

The government is ready to provide special incentives for investors putting more than USD 20 million into the machine building, mining, railway equipment, electrical equipment, chemical, construction, metallurgy, food processing and packaging, pharmaceutical, information and communication, electric power, wind, and solar energy industries.

The government maintains a dialogue with foreign investors through the Foreign Investors' Council under the president, the Council for Improving the Investment Climate chaired by the Prime Minister, and the recently created Investment Ombudsman. A special subunit of the Ministry of Investment and Development, the Investment Committee, is a "single-window" service provider, which is responsible for addressing all investors' questions. The Committee can be reached at +7 (71712) 299-095 and 7 (775) 102 18 26 or callcentre@cominvest.kz

Limits on Foreign Control

Although no sectors of the economy are legally closed to investors, restrictions on foreign ownership exist, such as a 20% ceiling on foreign ownership of media outlets, a 49% limit in domestic and international air transportation services and a 49% limit in telecommunications that does not apply to mobile operators. The government has indicated that it will remove restrictions in the telecommunications sector upon Kazakhstan's accession to the World Trade Organization (WTO). No constraints limit the participation of foreign capital in the banking and insurance sectors, but foreign bank and insurance company branches are forbidden to operate in Kazakhstan. The government requires foreign banking and insurance companies to form subsidiaries incorporated in Kazakhstan, and restrict foreign ownership of agricultural land.

Privatization Program

By law and in practice, foreign investors can participate in privatization projects. The government of Kazakhstan and parastatal National Welfare Fund "Samruk-Kazyna" ("SK") are currently preparing 106 state-owned companies for privatization from 2014-2020. These companies are mostly subsidiaries of large national companies operating in the energy, mining, transportation, and service sectors. In 2014, SK started also two-year program of so-called People's initial public offerings (IPO), the terms of which would allow citizens and institutional investors to buy up to 10% of the stock of national companies, such as those that operate Kazakhstan's electrical grid (KEGOC) and national railway system (Kazakhstan Temir Zholy).

Screening of FDI

Foreign investors have complained about the irregular application of laws and regulations, and interpret such behavior as efforts to extract bribes. In the past, investors have reported harassment by the Financial Police via unannounced audits, inspections, and other methods. In 2014, the President ordered a nationwide moratorium on such inspections, which expired on January 1, 2015. At times, authorities have used criminal charges in civil disputes as a pressure tactic against businesses.

Many foreign companies say they must vigilantly defend their investments from a steady stream of decrees and legislative changes, most of which do not exempt or "grandfather in" existing investments. In some instances, the government uses bureaucratic stalling tactics to induce companies to "voluntarily" give up contractual concessions in exchange for services (i.e. licenses, permits, VAT refunds) which they would ordinarily expect to receive. Foreign investors also complain about arbitrary tax inspections, as well as problems in finalizing contracts, delays and irregular practices in licensing, and land fees. Foreign companies report that authorities at the local and national level arbitrarily impose environmental fines which are then placed in the general budget, as opposed to directly offsetting any alleged environmental damage. As a result, they argue that environmental fines are assessed to generate additional revenue rather than to punish companies for breaching environmental regulations. Some foreign firms have expressed concern that the government's failure to pay for services on time can prevent the foreign partner from advancing its investment program. In the past, the government has used such disputes as a pretext for alleging non-performance, enabling it to cancel contracts.

The government regulates foreign labor at both the macro and micro levels. The government limits foreigners' work permits to boost local employment based on the area of specialization and geographic region. From 2003-2008, the quota for foreign labor steadily increased from 0.14% to 1.6% of the total workforce, but was reduced by half on the heels of the economic crisis in 2008. In 2013, the foreign labor quota grew to 1.2% of the active labor force, but shrank in 2014 and 2015 to 0.7%. A February 2011 amendment to Kazakhstan's Expatriate Workforce Quota and Work Permit Rules required medium and large businesses to have 90% local content in their workforce for technical personnel and 70% for company executives as of January 2012. Following a concerted campaign led by Western oil companies, Kazakhstan passed an October 2011 decree exempting Kazakhstan's three largest hydrocarbon projects – Tengiz, Karachaganak and Kashagan – from the local content requirement for three years; the agreement expired on January 1, 2015, leaving the three operating consortia to apply for an exemption on a project-by-project basis. Other foreign businesses find it difficult to meet local content demands, especially in technical fields where Kazakhstan cannot supply skilled workers in sufficient numbers.

However, following recently accepted changes in legislation, the government may now allow some investors to bring in foreign labor with no restrictions for specific priority projects.

The 2011 Law on Migration allows foreign citizens with legal residence in Kazakhstan to work without seeking additional permission and without being counted against labor quotas. Kazakhstan has also opened its labor market for its Eurasian Economic Union partners Russia and Belarus, and labor migrants from those countries may stay in the country for 90 days without registering with the migration police.

Competition Law

In 2009, a law regulating competition came into force, which, targets cartel agreements, unfair competition, and uncompetitive actions by state agencies. The Committee for Regulating Natural Monopolies and Protection of Competition, which is now under the Ministry of the National Economy, reviews transactions for competition related concerns.

Investment Trends

Kazakhstan submitted its Memorandum on the Foreign Trade Regime (MFTR) to the World Trade Organization (WTO) in 1996, and the first round of consultations on accession took place in 1997. Kazakhstan has made significant progress in implementing the legal framework necessary for WTO accession and has signed bilateral protocols on market access for goods and services with the bulk of working party members. Multiparty talks have been more contentious, with difficult negotiations centering on agricultural subsidies, sanitary and phytosanitary standards, local content requirements, export duties on petroleum, tariff rate adjustments, and enforcing intellectual property rights for pharmaceuticals. Despite domestic opposition to compromising on these issues, the government has vowed to satisfy working party concerns in order to accede to the WTO as soon as possible.

Russia, Belarus, and Kazakhstan officially entered into a Customs Union on July 1, 2010. Kazakhstan's trade policy is now heavily influenced by regulations promulgated by the Customs Union and its governing body, the Eurasian Economic Commission, a supra-national body

located in Moscow. As a condition of membership in the Customs Union, Kazakhstan almost doubled its average import tariff and introduced annual tariff-rate quotas (TRQs) on poultry, beef, and pork. U.S. exporters have expressed frustration about the trade-limiting effects of these TRQs, and the way they are calculated and distributed.

In May 2014, Kazakhstan and its Customs Union partners signed a treaty to create a common economic space to be known as the Eurasian Economic Union (EAEU). The EAEU is expected to provide for the free movement of services, capital, and labor within their common territory. The Union came into force on January 1, 2015 and accepted Armenia into the union on January 2. The government of Kazakhstan has asserted that EAEU agreements and legislation comply with WTO standards.

Kazakhstan's government is optimistic that further integration within the EAEU will make Kazakhstan more attractive to foreign investment by expanding market access to partner countries. However, in 2014 Kazakhstan's trade with Russia declined by 20%. Moreover, a devalued Russian ruble provoked an upsurge of spontaneous import of Russian goods to Kazakhstan making Kazakhstani goods less competitive for regional export.

Foreign Investment in the Energy & Mining Industries

Kazakhstan makes policy-level efforts to improve the investment climate by introducing amendments to existing legislation and alleviating requirements for visas and work permits to expatriates. However, execution of these changes by local governments are uneven and foreign investors complain about the government's tendency to challenge contractual rights, to introduce preferences for domestic companies, and to create mechanisms for government intervention in foreign companies' operations, particularly in procurement decisions. Business associations and investment advisors remain concerned that Kazakhstan's tax code might theoretically undermine tax stability clauses in existing subsoil contracts. The government has stated that it will only guarantee tax stability for existing production sharing agreements (PSAs) and for the one major hydrocarbon project that has a tax and royalty contract (Tengiz). Contracts for the Tengiz, Kashagan, and Karachaganak fields include tax stability clauses that theoretically shelter the operating companies from changes to the tax code or customs regime.

In April 2008, Kazakhstan introduced a customs duty on crude oil and gas condensate exports that, as of March 2015, stood at USD 60 per ton. Companies that pay taxes on mineral or crude oil exports are exempted from export duties. Revenues from the export customs duty are not deposited into the National Fund, which accumulates much of the government's proceeds from the commodity sector, but instead go directly into the government budget. Government officials stated in 2014 that export customs duties add about USD 3 billion to the budget, 95% of which came from oil and oil products. Currently, the Ministry of National Economy-led working group, consisting of representatives of the Ministry of Finance, the Ministry of Energy, the KazMunayGas national oil company, and the KazEnergy Association, is drafting proposals based on the recommendations of over 80 subsoil users that if accepted will reduce the customs duty on crude oil and gas condensate exports.

The 2010 Law on Subsoil and Subsoil Use contains explicit requirements for purchasing local goods and services related to offshore oil and gas exploration and production. The December

2009 Local Content Law (LCL) also requires companies to set a minimum percentage of local content for goods and services in contracts, but did not address pre-existing contracts. The government's local content strategy is widely considered to discriminate against foreign investors. International oil companies complain that implementation is uneven, irregular, and non-transparent, particularly at the local level. Representatives of international service companies also report it is difficult to obtain Kazakhstani certificates of origin. According to the LCL, a product must carry a Kazakhstani certificate of origin to meet the local content criteria, and the lack of such a certificate constitutes a legal violation. U.S. businesses have reported pressure from the government to rewrite contracts to include revised local content standards. The LCL allows the state to revoke the subsoil production rights of companies that do not meet local content requirements during a project's exploration phase. The National Agency for Local Content Development under the Ministry of Investment and Development (MID) has threatened to unilaterally terminate subsoil use contracts over alleged violations of local content requirements; no contracts are known to have been annulled.

The government is currently drafting an Action Plan on Enhancement of Local Content in Procurements for Major Subsoil Users and Strategic Mining and Petroleum Companies that would require companies to utilize 50% local content for Front End Engineering Design work, ban the export of geological information (core samples, rocks and reservoir fluids), and place a MID representative on the Boards of Directors of key subsoil use projects. Kazakhstan's Foreign Investors Council was allowed to express industry's concerns with the Action Plan, the status of which is still pending.

Before the enactment of the Amendments to the 2010 Subsoil Use Law on December 29, 2014 (2014 Amendments), the 2010 Subsoil Law provided that the Ministry of Energy may unilaterally terminate a subsoil use contract if a subsoil user fails to correct more than two previously committed breaches of its obligations under a subsoil use contract or project documents within the time period specified in the Ministry of Energy's notification of the breach. According to the 2014 Amendments, the breach of obligations stipulated by project documents only is no longer a sufficient ground for termination. The 2014 Amendments introduced new grounds for unilateral termination – the breach of financial obligations under a subsoil use contract by more than 70 percent for two consecutive years.

Prior to the 2014 Amendments, every year the government has been issuing a decree listing specific hydrocarbon fields and mineral deposits as having "strategic significance." The 2014 Amendments oblige the government to develop "strategic" criteria and compile the list based on these criteria, rather than rely on its previous practice of using its discretionary authority to make such determinations. The government can still block the sale of oil and gas assets and exclude specific companies from participating in oil and gas tenders in the interests of national security. Companies must also obtain the government's permission to conclude combined exploration and production contracts.

The 2014 Amendments abolished certain mandatory expert reviews of draft subsoil use contracts, removed the requirement for feasibility studies as a prerequisite for entering into production contracts, and extended the maximum time for companies to develop and receive approval for project documents. In addition, they reduce the expertise requirements to obtain a

mineral license to 60%. Moreover, companies extracting solid mineral resources--excluding uranium--will no longer need to receive advance permission to change production volumes of less than 20% of the projected targets.

The 2010 Subsoil Law gave the state the preemptive right to participate in equity transactions involving subsurface user rights in oil and gas or mining operations, including but not limited to the purchase of shares in new exploration and production projects. The 2014 Amendments restricted this right to “strategic” deposits and areas, which helped to significantly reduce the number of approvals required for non-strategic objects. The approval of a conciliatory interagency commission is sufficient to approve contracts involving non-strategic objects. The 2012 Law on Natural Gas and Gas Supply created a national gas operator to exercise the state’s preemptive right to buy natural gas from subsoil users for domestic consumption. The 2012 Law on Pipelines gives the state a preemptive ownership right to no less than 51% of newly created pipelines.

An April 2014 amendment to the Administrative Code reduces by 50% the size of potential penalties for exceeding permissible greenhouse gas emissions, and will exempt industrial firms from paying over USD 1 billion of greenhouse fines assessed in 2013. It also provides relief for greenhouse penalty charges for the first half of 2014. Several international oil companies, however, believe that the government targets them with environmental fines to recoup revenue losses caused by stagnant, declining, or delayed production.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	126 of 175	transparency.org/cpi2014/results
World Bank’s Doing Business Report “Ease of Doing Business”	2015	77 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	79 of 143	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	11,550	data.worldbank.org/indicator/NY.GNP.PCAP.CD

2. Conversion and Transfer Policies

Foreign Exchange

The National Bank of Kazakhstan regulates the national currency by means of a pegged floating exchange rate regime. In February 2014, the National Bank devalued the Kazakhstan Tenge (KZT) 19% from 155 to 185 +/- 3 to the U.S. dollar. According to the National Bank, growing speculative pressure on the KZT and other emerging currencies, highly volatile world commodity markets, and the depreciation of the Russian ruble fueled this decision. In September

2014, the National Bank adjusted its monetary policy corridor to KZT 185 +/-15 to the USD. In response to growing concerns in the market about the need for further devaluation of the tenge in late 2014 and early 2015, the National Bank has publicly stated that it intends to avoid any sharp fluctuations in the value of the national currency over the short term, while pursuing a move to inflation targeting over the medium term.

Kazakhstan's total international reserves, including the National Bank's foreign currency and gold reserves, equaled USD 100.7 billion (at current prices) as of February 2015. The National Bank monitors the currency operations of select subsidiaries or joint ventures of foreign corporations, primarily in the oil and gas, construction, and mining industries on the grounds that such practices improve statistical data on balance of payments and external debt.

Kazakhstan is bound by Article 8 of the International Monetary Fund's Articles of Agreement, adopted in 1996, which forbids the government to restrict currency conversions or the repatriation of investment profits. No distinction is made between residents and non-residents in opening bank accounts, but all account holders must have a Kazakhstani tax identification number. Money transfers associated with foreign investments, whether inside or outside of the country, are unrestricted. Article 16 of Kazakhstan's Law on Currency Regulation and Currency Control (hereafter the "currency law"), has since June 2005 permitted employers to pay non-residents their wages in foreign currency, and foreign investors may convert and repatriate earnings.

However, since 2012 the government requires all companies in the electricity generation sector to reinvest all profits and amortization to improve their respective plants. This regulation is expected to expire in 2015, but the government has not yet announced the follow-on regulation. Only one foreign company is known to be effected by this regulation. The currency law likewise prohibits restrictions on money transfers, and allows individuals to take up to USD 10,000 in cash out of the country without documenting its origin. The Customs Union has further liberalized money transfer rules by removing the requirement for a member state National Bank to certify the origin of amounts exceeding USD 10,000. On January 1, 2007, Kazakhstan eliminated licensing requirements and procedures for foreign currency operations except the licensing of exchange operations.

In response to current economic challenges, the National Bank declared its intention to conduct a de-dollarization policy and adjusted some rules of foreign exchange and currency regulation. Starting from April 2015, payments and transfers by residents of USD 100,000 or more in a foreign currency will require banks to provide proof of contract or other documentation demonstrating the necessity of the payments or transfers. With documentation, there is no limit on the number or size of foreign currency transactions. Residents (except banks) are also required to notify the National Bank about opening accounts in foreign banks.

Banks conducting transactions in a foreign currency are required to notify the National Bank of their operations once certain thresholds, USD 100,000 for capital outflow operations and USD 500,000 for capital inflow operations, are reached.

The National Bank's registration regime governs export-import credits and financial loans with terms longer than 180 days. The registration requirement is effective also for direct investment, acquisition of exclusive intellectual property rights, and property-related transactions. Banks must register these transactions and notify the National Bank before completing them. Legislation stipulates that non-fulfillment of payment obligations related to export-import contracts can trigger administrative or criminal charges. Administrative penalties are applied for non-payment of up to USD 50,000, above which criminal charges are applied. Following December 2011 legislative amendments to the currency law, the National Bank no longer requires so-called transaction passports for export-import operations, but requires commercial banks to issue contract registration numbers for currency imports and exports. A registration number is required for all transactions exceeding USD 50,000, and the procedure to receive a registration number can take several days.

The currency law allows the government to create a "special currency regime" in the event the country's economic and financial stability are in jeopardy. Measures may include requirements for companies to retain a certain percentage of their foreign currency profits in the NBK or other authorized banks, the mandatory sale of foreign currency earnings, and limits on the use of foreign bank accounts. As this is considered an extreme measure, its application in the near future appears unlikely.

Remittance Policies

The U.S. Embassy is not aware of any concerns with regard to remittance policies or the availability of foreign exchange conversion for remittance of profits. However, Kazakhstan's 2012 Law on Electricity Generation could be used to require electricity generators to reinvest all of their profits into infrastructure upgrades, thereby negating foreign investors' opportunity to realize profits or take them out of the country.

A 2011 Financial Action Task Force (FATF)-style peer review conducted by members of the Eurasian Group on Combatting Money Laundering and Terrorist Finance found Kazakhstan compliant or largely compliant with 13 recommended preventive measures, partially compliant with 18 recommended preventive measures, and not compliant with 16 preventive measures, including recommendations that regulators pay close attention to suspicious or unusual transactions or transactions concerning certain foreign countries deemed to be high-risk for money laundering or terror financing. The report, available at <http://www.fatf-gafi.org/countries/j-m/kazakhstan/>, recommends that the government further strengthen legislation in order to comply with these recommendations.

3. Expropriation and Compensation

The bilateral investment treaty between the United States and Kazakhstan requires the government to provide adequate compensation in the event of expropriation. The 2003 Law on Investments allows Kazakhstan to nationalize or requisition property in emergency cases, and guarantees investors a full compensation of losses in the case of nationalization and redemption of property at fair market value in the case of requisition. However, a definition of the fair market value is subject to a separate legal procedure.

Over the past five years there have been two allegations of government expropriation in the oil and gas sector of comparatively small companies. Both cases are still involved in arbitration. Neither case involves U.S. citizens.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Kazakhstan's Civil Code establishes general commercial law principles. The 2003 Law on Investments defines an investment dispute as "a dispute ensuing from the contractual obligations between investors and state bodies in connection with investment activities of the investor," and states such disputes can be settled by negotiation, litigation, or international arbitration. Aggrieved investors can seek dispute settlement in Kazakhstan's courts or international arbitration. Although some analysts believe the government prefers litigation to arbitration, courts will enforce arbitration clauses in contracts. Any court of original jurisdiction can consider investment disputes and bankruptcy cases. Monetary judgments are normally made in domestic currency.

Bankruptcy

A 2014 bankruptcy law improves the insolvency processes by permitting accelerated business reorganization proceedings, extending the period for rehabilitation or reorganization, and expanding the powers of insolvency administrators. The law also eases bureaucratic requirements for bankruptcy filings, gives creditors a greater say in continuing operations, introduces a time limit for adopting rehabilitation or reorganization plans, and adds court supervision requirements. In part due to these changes, the World Bank ranked Kazakhstan 63th for ease of resolving insolvency in its latest "Doing Business" report. The World Bank's report indicates the average business bankruptcy in Kazakhstan takes 1.5 years on average, costs 15% of the debtor's estate, and the average outcome is breakup and sale. The average recovery rate is 43 cents on the dollar.

Investment Disputes

A number of investment disputes involving foreign companies have risen in the past several years linked to alleged violations of environmental regulations, tax laws, transfer pricing laws, and investment clauses. Some disputes relate to alleged illegal extensions of exploration schedules by subsurface users, as production sharing agreements with the government usually make costs incurred during this period fully reimbursable. Some claims involve hundreds of millions of dollars. One ongoing dispute relates to the non-payment for services rendered by a U.S. company to a government-owned enterprise. In another case, local tax authorities alleged improper apostille of an American company's U.S. tax residence certificate to deny benefits from the double taxation treaty. Company executives were threatened with criminal prosecution if their court appeals of the tax ruling failed.

Problems arise in the enforcement of judgments, due to the lack of judicial independence and perceived ability to influence judicial outcomes. The courts oversee a high volume of cases, often without sufficient time for preparation and/or review of evidence. Judges typically handle

a wide range of cases and rarely develop expertise in any specific area of commercial law, let alone the full range of foreign investment issues handled by the court system.

In an effort to encourage foreign investment, the government has developed dispute resolution mechanisms aimed at enabling aggrieved investors to seek redress without requiring them to litigate their claims in the courts. In 2012, every regional government set up an Investors' Service Center. The national government in 2013 established an Investment Ombudsman. In Kazakhstan, the Investment Ombudsman is closely associated with the sitting government and is responsible for resolving foreign investors' grievances by refereeing inter-cabinet disagreements that hamper investment activities. Since 2014, Minister of Investment and Development Asset Issekeshv has served as de facto Investment Ombudsman; however, in February 2015, Prime Minister Massimov made Issekeshv's appointment official. As of March 2015, it remains unclear whether the Investment Ombudsman will have the power to compel governmental bodies to correct mistakes made in investment disputes or whether it will remain a governmental coordinating body for disputes.

Kazakhstani law provides for government compensation for violations of contracts that were properly entered into and guaranteed by the government. However, where the government has merely approved or confirmed a foreign contract, the government's responsibility is limited to the performance of administrative acts (for example, concerning the issuance of a license, granting of a land plot, or mining allotment, etc.) necessary to facilitate the investment activity in question. In such a case, litigation or commercial arbitration may be needed to remedy the alleged violation.

International Arbitration

Despite effective dispute resolution mechanisms for most commercial activity, foreign investors have expressed serious concern about the lack of explicit provisions in the Subsoil Law for international arbitration. International law firms worry that because the Subsoil Law does not expressly provide for international arbitration, the government might choose not to include such a provision in future subsoil contracts, although the Ministry of Justice does have a special legal department to defend the country's interests in international courts.

Companies that have international arbitration specifically written into their contracts have expressed reluctance to utilize the provision for fear of irrevocably damaging their relationship with the government. In one instance when a foreign company exercised its write to arbitration, the company "won" some elements of its dispute. However, because the government had the right to decide how to implement the arbitrator's decision, the company did not receive the anticipated relief.

ICSID Convention and New York Convention

Kazakhstan has been a member of the International Center for the Settlement of Investment Disputes (ICSID) since December 2001. In 1995 they ratified the Recognition and Enforcement of Foreign Arbitral Awards in 1995 (New York Convention). By agreement, any international arbitral award rendered by the ICSID, a tribunal applying the UN Commission on International Trade Law Arbitration rules, or by the Stockholm Chamber of Commerce, the London Court of

International Arbitration, or the Arbitration Commission at the Kazakhstan Chamber of Commerce and Industry is enforceable in Kazakhstan.

Duration of Dispute Resolution

Even when investment disputes are eventually resolved in accordance with contractual conditions, the process of reaching a resolution can be very slow and require a considerable investment of time and resources. Many investors therefore elect to handle investment disputes privately, rather than make their cases public. The U.S. Embassy advocates on behalf of U.S. firms with investment disputes.

Additionally, the U.S. Ambassador participates in a monthly meeting with the Prime Minister's Council to Improve the Investment Climate. The Council was created with the goal of paying special attention to questions related to foreign investors, including protection of their rights and interests. The Council has proved to be an efficient forum for foreign companies to raise concerns about doing business in Kazakhstan to the country's Ministers and decision makers. In 2012-2014, the Council discussed various issues, including tax administration problems, decriminalization of administrative violations, the rule of law, judicial independence, and the arbitrary application of environmental fines.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

Kazakhstan is not a member of the World Trade Organization (WTO) but has applied for accession. Kazakhstan has enacted a number of laws that mirror WTO standards, including those related to investment, banking, intellectual property rights, customs, and privatization.

Kazakhstan is not a signatory to the Agreement on Trade-Related Investment Measures (TRIMs).

Investment Incentives

The government is using preferences to help diversify its economy away from the extractive sector. Priority sectors include agriculture, machine building, mining and railway equipment, electric equipment, chemical and agro-chemical, construction, metallurgy, oil processing, food processing, pharmaceuticals, information technologies, electric power, and development of wind and solar energy. The 2003 Law on Investments and the Tax Code provides the following preferences for investors implementing projects in priority sectors:

- Ten-year exemption from corporate income and land taxes, eight-year exemption from property taxes;
- Investment subsidy. A reimbursement of 30 % of capital input after launching the investment project;
- Unrestricted access to foreign labor for the duration of the project;
- Customs duty exemptions and in-kind grants.

The Investment Committee under the Ministry of Investment and Development makes decisions on compliance of projects with priority project requirements. The government's preference system applies to new and existing enterprises, and the duration of tax preferences increases with the size of investment.

The Investment Committee also ensures that investors meet their contractual obligations. Regional tax authorities have the discretion to extend tax preferences, but the law also allows the government to rescind incentives, collect back-payments, and revoke an investor's operating license if an investor fails to fulfill contractual obligations.

In order to attract investors from countries with advanced technologies, the government introduced a visa-free regime for individuals from the U.S., Netherlands, the United Kingdom, France, Germany, Italy, Japan, Malaysia, the United Arab Emirates, and South Korea. The Government will consider a prolongation of this regime after July 2015.

More information on preferences and incentives is available at www.invest.gov.kz.

Research and Development

U.S. and other foreign firms are able to participate in government financed and subsidized research and development programs. Post is not aware of any restrictions in this regard.

Performance Requirements

Local content requirement is one of the government's major performance requirements, and especially affects the work of foreign investors in the energy and mining industries as well as suppliers of goods and services to national holding companies like Samruk-Kazyna (SK). The Ministry of Energy, Ministry of Investment and Development and SK monitor local content compliance in local companies. The government has promised to reduce local content requirements upon accession to the WTO. (Please see 1.9. Investment Trends for details) and non-tariff barriers.

Data Storage

The Government of Kazakhstan does not require foreign IT providers to turn over source code or encryption keys. We are not aware of any rules that require foreign companies to maintain certain amounts of data storage in Kazakhstan.

6. Right to Private Ownership and Establishment

Private entities, both foreign and domestic, have the right to establish and own business enterprises, buy and sell business interests, and to engage in all forms of commercial activity.

Kazakhstan's constitution provides that land and other natural resources may be owned or leased by Kazakhstani citizens. The 2003 Land Code allows citizens and Kazakhstani companies to own agricultural and urban land, including commercial and non-commercial buildings.

Amendments to the Land Code in 2011 permit foreigners to own land to build industrial and non-industrial facilities, including dwellings. Foreigners may rent, but not own, agricultural and forest service land through either a Kazakhstani-registered joint venture or a full subsidiary for up to 25 years. The Land Law does not allow private ownership of the following types of land:

- land used for national defense and national security purposes;
- specially protected nature reserves;
- forests, reservoirs (lakes, rivers, canals, etc.), glaciers, swamps, etc.;
- designated public areas within urban or rural settlements;
- main railways and public roads;
- land reserved for future development and construction of national parks, railways and public roads, subsoil use and power facilities, and social infrastructure.

7. Protection of Property Rights

Real Property

Secured interests in property (fixed and non-fixed) are recognized under the Civil Code and the 2003 Land Code. All property and lease rights for real estate must be registered with the Ministry of Justice through its service centers distributed throughout the country. According to the Doing Business Report, Kazakhstan stands at 14th of 189 countries in terms of the ease of registering property. In 2014, Kazakhstan introduced new procedures aimed at expediting property transfer and registration.

Intellectual Property Rights

To facilitate its WTO accession and attract foreign investment, Kazakhstan continues to improve its legal regime for protecting intellectual property rights (IPR). The Civil Code and various laws, in principle, protect U.S. intellectual property. In 2014, Kazakhstan was not listed in the USTR's Special 301 report.

Trademark violation is a crime in Kazakhstan. Registration fees charged to foreign trademark applicants are significantly higher than those charged to domestic applicants. Applications for trademark, service mark, and appellations-of-origin protection must be filed with the National Patent Office and approved by the Ministry of Justice. Trademarks and service marks are afforded protection for 10 years from the date of filing. The 1996 Law on Copyrights and Related Rights largely conforms to the requirements of the WTO TRIPS Agreement and the Berne Convention. Copyright Law allows licensed vendors to seek damages from unauthorized dealers selling pirated merchandise.

According to official reports, customs authorities seized goods worth USD 21 million in 2013 and one rights holder filed suit in court. The Ministry of Justice estimated approximately USD 200 million in seizures in 2014, but noted that the vast majority of cases were dismissed due to inaction by rights-holders. Customs authorities have also expressed a concern over the passive position of many rights-holders and what they perceive as an unwillingness to address IPR protection challenges jointly with government bodies.

In 2014, new procedures came into force that make formerly administrative violations criminal violations and lengthen criminal jail terms from five years to seven years. Articles 198 and 199 of the new Criminal Code define punishment for violations of copyright and allied rights, and for violations of rights for inventions, useful models, industrial patterns, selective achievements, and integrated circuits topographies.

Patent protection is available for inventions, industrial designs, prototypes, novel processes, and products with industrial applications. The National Institute of Intellectual Property performs formal examinations of patent applications. Unsuccessful applicants can appeal the National Institute of Intellectual Property's decisions to the Ministry of Justice. Kazakhstan is a member of the Moscow-based Eurasian Patent Bureau and the Munich-based European Patent Bureau.

Disclosure of trade secrets, production, purchase, transportation, storage, or sale of unregistered or counterfeit pharmaceuticals are prosecuted under the Administrative Code and the Civil Code, although enforcement of these prohibitions is considered lax.

Following the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) requirements, Kazakhstan has been improving its IPR legislation for the last decade. In 2014, Article 8 of the Patent Law was modified to extend protection based on novelty and originality. The Law on Trademarks has been amended to ensure equal protection for trademarks and geographic indications by determining priority based on registration date. The Law on Selective Achievements has strengthened the rights of patent attorneys, defined their qualification requirements, and sets time limits for conducting patent examinations.

Kazakhstan has joined multiple international agreements intended to strengthen its IPR protection regime. Kazakhstan has ratified 18 of 24 treaties endorsed by the World Intellectual Property Organization (WIPO).

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at <http://www.wipo.int/directory/en/>."

Resources for Rights Holders

Contact at the U.S. Embassy in Astana:
Patrick Horne
Economic Chief
+7-7172-70-24-97
InvestmentClimateKZ@state.gov

Country/Economy resources: The American Chamber of Commerce (AmCham) in Kazakhstan:
<http://www.amcham.kz>

8. Transparency of the Regulatory System

Non-transparent and arbitrary application of laws remains a major problem in Kazakhstan and an obstacle to expanded trade and investment. Foreign investors complain of inconsistent standards and corruption. In spite of the government's efforts to encourage foreign participation in the

economy, some foreign investors point out that the government is not always evenhanded and sometimes reneges on its commitments. Although the Investment Committee of the Ministry of Industry and New Technologies was established to facilitate foreign investment, it has been largely unable to address the concerns of foreign investors.

A large national business union created in July 2013 called the National Chamber of Entrepreneurs is gradually becoming an active lobbyist of business interests and an influential participant in the regulatory and policy making process.

Kazakhstan has steadily improved its business environment since independence. It has streamlined some bureaucratic practices, provided accelerated business start-up procedures, reduced minimum capital requirements for businesses, and simplified the procedures for registering property and paying taxes. As a result, the 2014 Ernst& Young attractiveness survey ranked Kazakhstan as the second leading CIS market for investment, saying that “the country’s “brand perception” is growing strong, while investor confidence in the country’s potential is also at an all-time high, compared with previous years.”

9. Efficient Capital Markets and Portfolio Investment

Kazakhstan’s capital markets remain underdeveloped and illiquid, with a financial system that is dominated primarily by banking institutions. An effective regulatory system exists to encourage and facilitate portfolio investment, though in practice there is insufficient liquidity in domestic public markets to enable investors to obtain reliable asset price information or to enter and exit sizeable positions. Kazakhstan’s largest companies generally prefer to go abroad when seeking public listings or Eurobond financing. Existing policies generally do not restrict the free flow of financial resources into product markets, though local content requirements have a distorting effect on factor markets for resources such as labor.

The National Bank of Kazakhstan provides regulatory oversight of the financial system, including banks and non-banking financial institutions and the Kazakhstan Stock Exchange, and is a major player in the system as a whole. In addition, the National Bank manages and invests all of Kazakhstan’s foreign exchange reserves, its USD 78 billion National Fund, and its USD 25 billion Single Pension Fund, raising concerns of a conflict of interest between its regulatory and investment functions. In line with the requirements of IMF Article VIII, the National Bank does not place restrictions on payments and transfers for current international transactions.

While official policy generally supports credit allocation on market terms, the government in recent years has placed billions of dollars on deposit in the banking system in an attempt to stimulate lower-cost lending to SMEs. Most domestic borrowers obtain credit from Kazakhstani banks, although foreign investors often find margins and collateral requirements onerous, and it is usually cheaper and easier for foreign investors to use retained earnings or borrow from their home country. Since 1998, Kazakhstani banks have placed Eurobonds on international markets and obtained syndicated loans to support domestic lending.

Money and Banking System, Hostile Takeovers

Leading Kazakhstani banks were able to obtain reasonably good ratings from international credit assessment agencies until the global financial crisis struck. Kazakhstan has 38 commercial banks. As of March 1, 2015, the five largest banks (KazKommertsBank, HalykBank, BTA bank, Tsesna bank and Sberbank-Kazakhstan) held assets worth approximately USD 50.7 billion, or about 53% of the banking sector's total assets. Kazakhstan's banking system has not yet fully recovered from the 2008-09 global financial crises due to the poor and deteriorating quality of many banking assets, capital constraints, and the aggressive growth of consumer lending in 2013. In spite of the government's efforts, local banks still have a high rate of toxic assets. Loans overdue by more than 90 days reached nearly USD 18.1 billion as of February 1, 2015, and comprised just over 23.5 percent of the total. BTA bank, which has defaulted on its debt obligations twice in the past few years, "leads" Kazakhstan's banks with USD 9.9 billion worth of non-performing loans on its books.

In February 2014, the National Bank of Kazakhstan devalued the tenge (KZT) by approximately 19% in a single day. Since then, USD-denominated deposits in the banking system have risen sharply, accounting for 50.5% and 68% of corporate and retail deposits respectively as of February 2015. The lack of tenge (KZT) funding has raised the cost of loans denominated in the local currency and prompted an increase in USD-denominated loans.

Kazakhstan's Stock Exchange (KASE), which has operated since 1993, is an insignificant source of investment. The number of listed companies dropped from 354 in 2010 to 132 in 2015. The government's decision in 2013 to consolidate all pension savings into a single state-owned pension fund led to a sharp decrease in liquidity on the exchange, as Kazakhstan's largest institutional investors ceased to operate. Trading is dominated by block trades and the spreads are extremely wide. 72.3% of KASE trades in January 2015 were in foreign exchange, while REPO transactions comprised a further 24.1%, and government securities trading accounted for roughly 2.2%. In January 2015, the stock market capitalization was USD 24.9 billion, and bond market capitalization was USD 36.6 billion.

The newly created Single Pension Fund holds USD 24.7 billion as of February 2015. Its largest investment positions are in Kazakhstani government securities (44.22%) and corporate bonds of Kazakhstan-based companies (26.67%). The Single Pension Fund is not listed, and does not trade, on the KASE. Due to its already small size and lack of development, the KASE's decreased capitalization and diminished transaction volumes have not impacted financial markets or the overall economic situation.

As there are relatively few publicly traded firms, few hostile takeovers have occurred in Kazakhstan. Defensive measures against takeovers are not targeted toward foreign investors in particular. The Civil Code requires a company that has purchased a 20% share in another company to publish information about the purchase.

10. Competition from State-Owned Enterprises

Officially, private enterprises compete with public enterprises under the same terms and conditions. In reality, however, state-owned enterprises generally enjoy better access to natural resources, markets, credit, and licenses than private entities.

The law On State Property defines national companies, national holding companies, and national managing holding companies. A national company is a government-created joint stock company which operates in “fundamental industries” or facilitates regional economic development, and in which the state holds a controlling interest. A national holding company is a government-created entity which holds shares in national companies. A national managing holding company is a government-created entity which manages the government’s interest in national holding companies, national development institutes, and other legal entities. As of the end of 2014, Kazakhstan had three national managing holding companies, one national holding company, and 33 national companies. The law requires all state-owned companies to publish annual reports and submit their books for independent audit. All state-owned companies are subject to the same tax burden as their private competitors.

OECD Guidelines on Corporate Governance of SOEs

National Welfare Fund Samruk-Kazyna (SK) is Kazakhstan's largest national holding company, and manages the state-owned companies that dominate the oil and gas, energy, mining, transportation, information, and communication sectors. By some estimates, SK controls more than half of Kazakhstan's economy, and is the nation's largest buyer of goods and services. Created in 2008, SK's official purpose is to facilitate economic diversification and to increase effective corporate governance; however, it spent its first two years spearheading the government's efforts to respond to the global financial crisis of 2008. The Prime Minister chairs SK's Board of Directors, and several other ministers and the Head of the Presidential Administration also serve on the Board, alongside three independent directors. President Nazarbayev has endowed SK with special rights, such as the ability to conclude large transactions between members of its holdings without public notification. SK enjoys a pre-emptive right to buy strategic facilities and bankrupt assets, and is exempt from government procurement procedures. Critically, the government can transfer state-owned property to SK, easing the transfer of state property to private owners. Although domestic and foreign companies can sell their products and services to SK, local content requirements may distort free competition. The government in 2013 created a national managing holding company called Baiterek to provide financial and investment support to non-extractive industries, drive economic diversification, and to improve corporate governance in its subsidiaries. Baiterek is comprised of the Development Bank of Kazakhstan, the Investment Fund of Kazakhstan, the Housing and Construction Savings Bank, the National Mortgage Company, the National Agency for Technological Development, the Distressed Asset Fund and other financial and development institutions. Like SK, the Prime Minister is Chairman of the Board, assisted by several cabinet ministers and independent directors.

Other notable state-owned enterprises include KazAgro, which manages state agricultural holdings such as the government’s wheat purchasing agent the National Food Contract Corporation, farm equipment subsidy provider KazAgroFinance, the Agrarian Credit

Corporation, and an agricultural insurance company. National holding company Parasat is charged with stimulating domestic scientific research and development in the high tech sector, and manages several scientific institutions and funds.

Although the government has announced plans to conduct initial public offerings (IPOs) to spur domestic private investment in national companies, the number of state-owned enterprises has increased in recent years. In addition to creating Baiterek in 2013, the government also established National Company Astana Expo-2017 that is responsible for Expo-2017 preparations. (Expo-2017 is an international exhibition designed to showcase “Future Energy” in Kazakhstan’s capital, Astana.) The government also created KazAvtoZhol to operate a planned toll road network. Analysts consider these national companies to be quasi-sovereign entities due to their strong affiliation with the government. International investment ratings of national companies are usually tied to the sovereign rating. National holding companies and national companies pursue investment policies consistent with the government’s official industrial policy. The government considers national companies tools for accomplishing its economic goals, and supports them accordingly. For example, since 2008 SK has several times received substantial subsidies and contributions from the government via its National Oil Fund.

Sovereign Wealth Funds

Kazakhstan's sovereign wealth fund is called the National Oil Fund, and was established by presidential decree in 2000. The fund exists to reduce the country's budgetary dependence on fluctuating world oil prices and to accumulate savings to benefit future generations. The Fund receives all direct taxes and a percentage of revenues from the oil sector, revenues from the privatization of state property in the mining and manufacturing industries, proceeds from sales of farmlands, as well as the Fund's investment income. The Ministry of Finance owns the National Fund, while the National Bank acts as trustee and selects external administrators from internationally recognized investment companies or banks to oversee the fund. Information on external administrators and the assets they manage is confidential. In addition to preserving wealth for future generations, the Fund is also used to support the government’s political and economic objectives. By the law, the Fund also invests in the domestic economy through official transfers to the state budget, which currently vary from USD 6.8 billion to USD 9.2 billion annually. In response to the deteriorating economic situation, this year the Government increased significantly the annual take from the Fund for the sake of a countercyclical fiscal policy. In 2015, USD 13.4 billion is planned to be transferred from the Fund,, including USD 3.7 billion for the Nurly Zhol stimulus program. This new economic policy program is expected to maintain labor intensive infrastructure projects and to support small business development in order to fuel the growth. In 2014,, the government used around USD 5.5 billion from the Fund to try to stimulate economic diversification and business development. President Nazarbayev has decreed that the Fund should retain a minimum balance of no less than 20% of GDP. The National Bank has directed the investment of USD 5 billion over the next five years into private equity, hedge funds, real estate, and infrastructure projects abroad to diversify the Fund’s assets and increase returns. As of March 1, 2015, the National Fund's assets totaled USD 71.7 billion.

11. Corporate Social Responsibility

President Nazarbayev has repeatedly asked foreign investors and local businesses to implement corporate social responsibility (CSR) projects, to provide occupational safety, pay salaries on time, and invest in human capital. The President presents annual awards for achievements in corporate social responsibility. In 2012, the Board of Directors of the National Welfare Fund Samruk-Kazyna adopted its own corporate social responsibility policy. This policy focuses on social and labor relations, training and development, safety measures in the workplace, environmental sustainability, and social projects spending. Foreign investors report that local government officials regularly pressure them to provide social investments in order to achieve local political objectives. These local officials also attempt to exert as much control as possible over both the selection of and the subsequent allocation of funding for the projects. A survey conducted in 2013 by a well-regarded NGO found that large companies are better practitioners of corporate social responsibility principles than their small and medium-size counterparts, although there is a likely correlation between resources and CSR outlays.

OECD Guidelines for Multinational Enterprises

Kazakhstan continues to make steady progress toward meeting OECD Guidelines for International Investment and Multinational Enterprises, and the government actively promotes corporate social responsibility. In 2014, the OECD published a report on Responsible Business Conduct (RBC) in Kazakhstan, which contains a comprehensive review of all aspects of the RBC, including Corporate Social Responsibility. The report may be found at http://www.oecd.org/countries/kazakhstan/RBC_in_Kazakhstan-2014.pdf

According to the report, various organizations such as the Eurasia Foundation of Central Asia (EFCA), the American Chamber of Commerce in Kazakhstan, the Centre for Corporate Governance and Business Ethics division within the Association of Financiers of Kazakhstan and the United Nations Development Program have started several CSR initiatives in Kazakhstan over last years. However, these efforts will have to be matched at the implementation level.

12. Political Violence

There have been no incidents of politically motivated violence against foreign investment projects, and politically motivated civil disturbances remain exceptionally rare. In 2012, Kazakhstan experienced several isolated incidents in which individuals or groups associated with Islamic extremists launched small-scale violent attacks against government offices, with most concentrating on police and national security organs. Foreign investment or foreigners working in Kazakhstan have not been targeted. Kazakhstan enjoys generally good relations with its neighbors, although the government is concerned that the borders with Kyrgyzstan and Uzbekistan are vulnerable to penetration by extremist groups.

In the January 15, 2012 parliamentary elections, the president's party Nur Otan won 80 percent of the vote, Ak-Zhol won 7.47 percent, and the Communist People's Party won 7.19 percent. All three parties elected are generally considered supporters of President Nazarbayev. While the Organization for Security and Cooperation in Europe (OSCE) asserted that the election did not meet Kazakhstan's OSCE commitments or international standards for democratic elections, and

opposition groups denounced the election as fraudulent, no significant demonstrations against the results occurred.

13. Corruption

The new Kazakhstani Criminal Code that entered into force in January 2015 strengthens penalties for accepting and giving bribes, including instituting a lifetime ban on certain types of government employment for individuals convicted of corruption. The President signed a new anti-corruption decree in December 2014 that focuses on mitigating the conditions that lead to corruption, such as regular wage increases for civil servants, a transparent system for civil service hiring, and requirements for public servants to publish not only their salary but also their expenditures.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Kazakhstan acceded to the UN Anticorruption Convention in June 2008, but it is not a party to the OECD convention on Combatting Bribery of Foreign Public Officials in International Business Transactions.

Resources to Report Corruption

During the government restructuring in summer 2014, the Agency on Combating Economic and Corruption-Related Crimes was abolished and its powers transferred to the newly created Agency on Civil Service and Countering Corruption (for corruption-related crimes) and the Ministry of Finance (for economic and financial crimes).

Transparency International (TI) maintains a national chapter in Kazakhstan. Kazakhstan's rating in TI's annual Corruption Perceptions Index is 29/100 for the year 2014, placing Kazakhstan at 126 out of 175 countries rated – a relatively weak score but the best in Central Asia. TI experts have pointed out that corruption is particularly prevalent in the judiciary, police, customs, land registration, licensing, and construction projects. The government has signed on to the Extractive Industries Transparency Initiative (EITI) and EITI's International Board has designated Kazakhstan as an "EITI compliant" country.

U.S. firms have cited corruption as a significant obstacle to investment. Law enforcement agencies occasionally have pressured foreign investors who are perceived to be uncooperative with the government, a practice that is made possible by the fact that many errors or omissions that would constitute routine civil violations in OECD countries are treated as criminal cases in Kazakhstan. The government and local business entities are aware of the legal restrictions placed on business abroad, such as the Foreign Corrupt Practices Act and the UK Bribery Act.

14. Bilateral Investment Agreements

The United States-Kazakhstan Bilateral Investment Treaty came into force in 1994, and the United States and Kazakhstan signed an Investment Incentive Agreement in 1992.

Bilateral Taxation Treaties

In 1996, a Treaty on the Avoidance of Double Taxation between the United States and Kazakhstan came into force. Since independence, Kazakhstan has signed treaties on the avoidance of double taxation with 46 countries, and bilateral investment protection agreements with 49 countries (and ratified 33), including Great Britain, Germany, Italy, France, Japan, Russia, South Korea, Iran, China, Turkey, and Vietnam. Some foreign investors have charged that Kazakhstani tax authorities are reluctant to refer double taxation questions to the appropriate bi-national resolution bodies.

15. OPIC and Other Investment Insurance Programs

The Overseas Private Investment Corporation (OPIC) and the government of Kazakhstan signed an Investment Incentive Agreement in 1992, and OPIC has been active in Kazakhstan since 1994. OPIC seeks commercially viable projects in Kazakhstan's private sector and offers a full range of investment insurance and debt/equity stakes. Kazakhstan is also a member of the Multilateral Investment Guarantee Agency (MIGA), which is part of the World Bank Group that provides political risk insurance for foreign investments in developing countries.

16. Labor

Kazakhstan has an educated workforce, although the proportion of highly technically competent workers is fairly small. Demand for skilled labor generally exceeds local supply. Technical skills, management expertise, and marketing skills are all in short supply. Many large investors rely on foreign workers and engineers to fill the void. The Kazakhstani government has made it a priority to ensure that Kazakhstani citizens are well represented in foreign enterprise workforces. In 2009, and as noted above, the government instituted a comprehensive policy for local content, particularly for companies in the extractive industries. The government is particularly keen to see Kazakhstanis hired into the managerial and executive ranks of foreign enterprises. Local content regulations require a minimum of 1% of a project budget be earmarked for training programs and workforce development, including overseas assignments with the lead operator. Employers' reliance on foreign labor in the face of poverty in rural Kazakhstan has become a political issue in recent years. The current minimum wage for 2015 is approximately USD 116.9 per month; the minimum pension is USD 128.1 per month. As of the end of 2014, the government estimated that the unemployment rate was holding steady at 5.0% and youth unemployment at 4.0%; independent analysts suggest that unemployment is underreported by the government. In order to address concerns regarding unemployment and poverty, the government launched several national programs, including "Road Map for Employment 2020", "Road Map for Business – 2020" and "Nurly Zhol" ("A Bright Way"). These programs provide professional training courses, subsidize interest rates on credits for SMEs, and help to launch industrial projects creating new jobs.

Local content requirements and a quota system, which restricts the hiring of foreign employees, create additional burdens for employers. Several American and other foreign companies doing business in Kazakhstan have informed the U.S. Embassy that immigration authorities continue to closely scrutinize applications for foreign work permits. U.S. companies are strongly advised to

contact Kazakhstan-based law and accounting firms and the U.S. Foreign Commercial Service in Almaty for current information on work permits.

The Constitution and 2007 Labor Code guarantee basic workers' rights, including the right to organize and the right to strike. Workers can exercise this right if all arbitration measures defined by law are exhausted. Strike votes must be taken in a meeting where at least half of workers are present, and strikers are required to give five days' advance notice to their employer, include a list of complaints, and tell the employer the proposed date, time and place of a strike. The court has the power to declare a strike illegal at the request of an employer or the General Prosecutor's office. Workers who participate in illegal strikes are subject to penalties. The Labor Code prohibits lockouts. In July 2014, a new law on Labor Unions came into force. Several international organizations and labor unions objected to the requirement for factory-level unions to affiliate with larger unions arguing that the requirement restricts workers' freedom of association. Several rights groups have also expressed concern that amendments to Kazakhstan's Criminal Code increase penalties for participating in strikes deemed to be illegal, which is of special concern given Kazakhstan's lack of an independent judiciary. Kazakhstan joined the International Labor Organization (ILO) in 1993, and has ratified ILO conventions pertaining to minimum employment age, prohibition on the use of forced labor and the worst forms of child labor, prohibition on discrimination in employment, equal pay, and collective bargaining.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

The 2011 Law on Special Economic Zones allows foreign companies to establish enterprises in special economic zones, simplifies procedures to attract foreign labor, and establishes a special customs zone regime not governed by Customs Union rules. A system of tax preferences exists for foreign and domestic enterprises engaged in prescribed economic activities in Kazakhstan's ten Special Economic Zones (SEZ). The SEZs are located in the New Administrative Center in Astana, the Seaport of Aktau, the Alatau Information Technology Park (near Almaty), the Ontustik Cotton Center in south Kazakhstan, the international tourism zone "Burabay" (a resort area 300 kilometers from Astana), the Atyrau National Industrial Petrochemical Techno park, SEZ "Saryarka" in the Karaganda region, a transport and logistics zone in Khorgos at the Kazakhstan-Chinese border, and SEZ "Pavlodar", and SEZ "Chemical Park Taraz".

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (\$M USD)	2014	212,250	2013	231,876	www.worldbank.org/en/country
Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country (\$M USD, stock positions)	2014	18,458	2013	13,764**	http://elibrary- data.imf.org/public/FrameReport.aspx?v=3&c=11666796&pars=Country%2c916
Host country's FDI in the United States (\$M USD, stock positions)	2014	580.7	2013	580**	http://elibrary- data.imf.org/public/FrameReport.aspx?v=3&c=11666796&pars=Country%2c916
Total inbound stock of FDI as % host GDP	2014	8.7%	2013	5.9%	

*National Bank of the Republic of Kazakhstan: <http://www.nationalbank.kz/?docid=679>

Table 3: Sources and Destination of FDI

Kazakhstan 2013*

*Although the National Bank of Kazakhstan published the data as of the end of September, 2014, general results in terms of key foreign investors in the country and main destinations of Kazakhstan's outward direct investment are consistent.

** Tax havens like the British Virgin Islands, British Cayman Islands, or Luxembourg have always been among the top ten and top twenty sources of inward investment and destinations of outward investment.

Direct Investment from/in Counterpart Economy Data

From Top Five Sources/To Top Five Destinations (US Dollars, Millions)

Inward Direct Investment			Outward Direct Investment		
Total Inward	124,720	100%	Total Outward	23,366	100%
Netherlands	56,836	45.6%	Netherlands	12,405	53.1%
United States	13,764	11%	United Kingdom	3,551	15.2%
France	9,102	7.3%	Switzerland	939	4%
People's Republic of China	5,681	4.5%	Luxembourg	938	4%
British Virgin Islands**	4,738	3.8%	Ireland	674	2.9%

"0" reflects amounts rounded to +/- USD 500,000.

Table 4: Sources of Portfolio Investment

Kazakhstan as of June 30, 2014*

Source: <http://cpis.imf.org/>

*Although the National Bank of Kazakhstan published the data as of the end of September 2014, results of Kazakhstan's portfolio investment assets are consistent.

Portfolio Investment Assets

Top Five Partners (Millions, US Dollars)

Total			Equity Securities			Total Debt Securities		
All Countries	80,250	100%	All Countries	11,849	100%	All Countries	68,401	100%
United States	46,230	57.6%	United States	5,752	48.5%	United States	40,478	59.2%
United Kingdom	4,610	5.7%	Japan	1,116	9.4%	United Kingdom	3,497	5.1%
Japan	4,252	5.3%	United Kingdom	1,113	9.4%	Germany	3,290	4.8%
Germany	3,744	4.7%	Switzerland	559	4.7%	Japan	3,136	4.6%
France	3,580	4.5%	France	516	4.3%	France	3,064	4.5%

19. Contact for More Information

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