

On 29 October 2015, the Republic of Kazakhstan passed its Entrepreneurial Code (the “EC”) which will come into force on 1 January 2016. A number of provisions will come into force on 1 March 2016 and 1 January 2017 respectively, and certain transitional provisions will be effective between 1 January 2016 and 1 March 2016.

The EC sets out legal, economic and social conditions and guarantees for doing business, as well as for the state regulation and support of business activities. The EC incorporates and supersedes the following laws of the Republic of Kazakhstan: *On Peasant or Farm Enterprise*, *On Investments*, *On Private Entrepreneurship*, *On Competition*, *On State Control and Supervision* and *On State Support of Industrial and Innovative Activity*. Hence, the aforementioned laws shall terminate on 1 January 2016.

Please see below the key novelties and changes introduced by the EC:

General Terms and Conditions for Doing Business:

- In case of gaps or discrepancies between the EC provisions and other legislation regulating business activities, the EC provisions shall prevail.
- It is assumed that a business entity acts in good faith, including when it is guided by official interpretations by the government authorities, and the information provided thereby is deemed to be true and correct, unless the contrary is proven by a court or government agency.
- Any information available with government authorities which is required by business entities shall be accessible, unless access thereto is restricted by Kazakhstan law. Such information shall be provided free of charge, unless otherwise provided by Kazakhstan law.
- The EC prioritizes the principle of preventing the violations of business legislation over the principle of public enforcement.
- The EC introduces a register of business entities in the form of an electronic database classifying the information by business categories (i.e. small, medium and large businesses).
- A business entity may bind its employees in writing to confidentiality clause, and warn the state inspectors about a corresponding liability under Kazakhstan law.
- Before being considered, any piece of legislation affecting the interests of businesses must be published in mass media, including the online resources.
- Prior to the introduction of a new regulatory instrument or the tightening of regulatory controls, the competent authority shall analyse and assess the regulatory impact of such measures.
- No one may force businesses to engage in corporate social responsibility (CSR). Businesses engaged in charity activities shall be entitled to tax credits.
- State Corporation *The Government for the People* shall employ a "one-stop-shop" principle for providing services to businesses.

State Control and Supervision over Entrepreneurial Activities:

- The EC prohibits the state auditors from performing audits under special procedures based on risk assessment and selective audits of small businesses, including microbusinesses, within three years after their state registration.
- The EC clearly determines the grounds for unscheduled audits of business entities.
- Business entities may debar auditors from auditing if the periodicity of audits has been exceeded, if the term of audit is exceeded or expired, if audit is performed by unauthorized parties, and in some other cases.

- Audit shall be deemed invalid if the audit performance regulations set out in the EC are materially violated. The list of material violations is provided by the EC.
- Original documents may be seized or withdrawn only in compliance with the Criminal Procedure Code and the Code of Administrative Offences.

Antitrust Regulations

- The EC provides for a possibility to approach antitrust authorities and ask them to verify if a draft business contract complies with antitrust legislation.
- The register of market entities holding a dominant or a monopolistic position shall cover only the regulated markets.
- Antitrust authorities may issue a “notice” without investigation if they find out that a certain market entity abuses its dominant or monopolistic position.
- Starting from 1 January 2017, the EC will lift a number of restrictions on companies engaged in monopolistic activities (to provide services and to engage in other activities not related to natural monopolies; to own assets not related to regulated services, and other); and
- A company under antitrust investigation may initiate the review of a draft report on antitrust compliance findings by a conciliatory commission involving the independent experts.

Investments and Investment Projects

- Starting from 1 January 2017, all investment projects, except for priority and strategic ones, shall be exempt from VAT on import of raw materials and/or supplies under investment contracts.
- The EC introduces the definition of an "investment dispute", which is a dispute arising from contractual obligations between investors, including major investors, and government authorities with regard to investment activities. A major investor is a legal entity or individual who invests in the Republic of Kazakhstan amounts equivalent to at least 2,000,000 monthly calculation indices (as at 24 November 2015, approximately KZT 3,964,000,000 or US\$ 12,912,000).
- Investment disputes may be also referred to international arbitration courts agreed by the parties.
- When an investment contract is terminated prematurely by a Kazakhstan legal entity, either unilaterally or by mutual consent of the parties, such Kazakhstan legal entity shall pay all taxes and customs duties which have not been paid due to the granted investment preferences, and shall return to the government the received natural grant or its initial value as at the date of a transfer of such grant.
- All preferences granted before the enactment of the Kazakhstan Law *On Investments* of 9 January 2003 shall remain valid until the date specified in an investment contract.
- The EC introduces the position of a Kazakhstan Business Rights Commissioner whose mission is to represent, enforce and protect the rights and legitimate interests of businesses, as well as the interests of the business community at large.