In this issue we highlight major amendments to Kazakhstan legislation related to the adoption of the Entrepreneurial Code of Kazakhstan dated 29 October 2015, No. 375-V (the "Code"), effective from 1 January 2016.

The Code consists of seven (7) Sections, thirty-one (31) Chapters, and three hundred and twenty-four (324) Articles. It is aimed at unifying and systematizing the existing provisions of Kazakhstan law regulating entrepreneurial relations. Due to the adoption of the Code, one hundred and one (101) legislative acts are subject to amendment. Starting from 1 January 2016, the following laws have been repealed:

1. Law No. 214 "On Homestead or Commercial Farming" dated 31 March 1998 (the "Law on Farming");
2. Law No. 373 "On Investments" dated 8 January 2003 (the "Investments Law");
3. Law No. 124 "On Private Entrepreneurship" dated 31 January 2006 (the "Private Entrepreneurship Law");
4. Law No. 112-IV "On Competition" dated 25 December 2008 (the "Competition Law");
5. Law No. 377-IV "On State Control and Monitoring in the Republic of Kazakhstan" dated 6 January 2011;

Below we briefly outline the major provisions of the Code.

Definition of Entrepreneurship Extended

The Code combines the already existing entrepreneurship definitions specified in the Civil Code of Kazakhstan and in the Private Entrepreneurship Law. In addition, those definitions were supplemented with the principles of independence and entrepreneurial initiative.

Thus, according to the Code, entrepreneurship is an independent activity carried out at the initiative of citizens, oralmans (previously, oralmans' activities were not included in the definition of entrepreneurship), and legal entities aimed at making profits by using property, producing, selling goods, carrying out work, and providing services, where any such activity is based on the private property right (private entrepreneurship) or the right of economic management or
operational administration of State-owned enterprises (public entrepreneurship).

**New Principles of Cooperation between Businesses and the State Added to the Principles Set out by the Private Entrepreneurship Law**

- Along with the already existing principles stipulated by the Private Entrepreneurship Law and other legal acts, the Code introduces a number of new principles, including fair competition. Further, the Code includes the principle pursuant to which no functions of the government authorities shall be vested in any business associations.

**Institution of Entrepreneurship’s Corporate Social Responsibility**

- For the first time, the Code introduces the institution of corporate social responsibility with respect to the development of social, environmental, and other areas.
- Activities associated with corporate social responsibility are carried out voluntarily through charity and in other forms not prohibited by Kazakhstan law.
- The State encourages charitable activities of businesses, including by granting them the right to tax benefits in accordance with tax regulation of Kazakhstan.

**State Support for Private Entrepreneurship**

**General Provisions**

- The Code describes in detail different lines of State support for private entrepreneurship. There was no detailed description thereof in the Private Entrepreneurship Law. The Code specifies the following:

  - **small and medium-sized businesses:**
    - The Code does not exclude extraction, processing, and/or sale of oil, oil products, gas, electricity, or heat as business activities allowed for small businesses.
    - According to the Code, the simplified procedure for State registration as a type of State support is provided to small- and medium-sized businesses.
    - Now the trust management or lease of public property, which has not been used for over one year to launch production activities and services (apart from trade mediation activities) will be provided not only to small businesses, but also to medium-sized businesses.

  - **industrial and innovation activities:**
    - The definition of "innovation" has been extended. Thus, prior to the Code’s adoption, innovation required a certain result to be achieved while ensuring environmental safety and economic efficiency. Now, however, after the Code’s adoption, innovation means introducing a new or significantly improved product (goods or services) or a process, a new marketing method, or organizational method in business practices, workplace arrangement, or foreign relations.
    - The Code includes the national management holding (Baiterek NMH JSC) in the list of industrial and innovation system entities
participating in State support, in order to take part in implementation of State programs in the area of State support for industrial and innovation activities; and provide methodical and advisory assistance to entities involved in the industrial and innovation system etc.;

- The powers of the national institution in the spheres of the support for entities engaged in industrial and innovation activities have been supplemented with the following powers:
  - direct investments in charters capital of entities involved in industrial and innovation activities;
  - debt restructuring;
  - acquisition of the rights to claim repayment of loans (borrowings) extended by national development institutions, second-tier banks, and other legal entities where over fifty (50) per cent of the voting shares (participating interests in the charter capital) directly or indirectly belong to national management holdings, implementing and (or) involved in industrial and innovation projects;
  - development and implementation of measures for financial and economic recovery of industrial and innovation entities;
  - search for and engagement of strategic and institutional investors; etc.

- The powers of the national institution (Kazakh Institute of Industry Development JSC) in respect of industry development were supplemented with the powers related to the provision of services involving State support to drive labor productivity at industrial and innovation entities, and to develop territorial clusters;

- Measures for industrial and innovation activities were supplemented with the following:
  - support for increase in labor productivity and development of territorial clusters provided in the form of reimbursement of expenses associated with (1) raising the entity's competence; (2) development and/or examination of a comprehensive plan for an industrial and innovation project; (3) improvement of technological processes; (4) enhancement of manufacturing process management efficiency;
  - debt restructuring by way of (1) changes in payment schedules, (2) termination of rights (claims) in full or partially via debt forgiveness, (3) changes in the terms and conditions for investment and/or lending and/or financing, (4) the conversion of debt into contributions to charters capital, and (5) other ways.

▶ investment activities:

- For the purpose of obtaining investment preferences, an entity is treated as a newly established legal entity if its State registration was effected no earlier than twenty four (24) calendar months prior to the date of submission of the application for investment preferences, instead of the previously stipulated twelve (12) calendar months.
If an application for investment preferences contains a request for an investment grant, an investor should provide an expert opinion on the preliminary design and/or project documentation during the implementation period of a priority investment project, whereas previously, under the Investment Law, an expert opinion should have been provided along with the application for investment preferences.

The Code introduces the concept of a "major investor". The key determining criterion for a major investor is the amount of investment made by this individual or legal entity, where such amount should not be less than two million times the monthly calculation index.1

The authorized body on investments is obliged to issue requests for investment visas to non-residents carrying out investment activities in Kazakhstan.

Previously, the definition of investment projects included investments in production facilities built as part of a concession agreement. According to the current wording of the Code, along with the concession, an investment project includes investments in production facilities built, expanded, or upgraded in projects structured as public private partnerships.

The Code introduces the investment preferences for strategic investment projects for which investment contracts were concluded before 1 January 2015. The Code establishes that the corporate income tax investment preferences for investment strategic projects are to be provided by signing amendment agreements to the investment contract.

According to the Investment Law, investment preferences for priority investment projects are not available for legal entities in which the share of the State and/or a subject of the quasi-public sector as a founder and/or participant (shareholder) exceeds twenty-five (25) per cent. After the effective date of the Code, this maximum is set at twenty-six (26) per cent.

State Regulation of Prices and Tariffs

In general, the Code states that prices and tariffs for goods, work, and services are determined by business entities on their own. In this regard, “for the purpose of national security, enforcement of public order, human rights and freedoms, and public health in the Republic of Kazakhstan,” the Code classifies business entities' goods, work, and services, whose prices and tariffs are regulated by the State.

As from 1 January 2017, the list of entities holding dominant position and regulation of prices and tariffs on goods, work and services, is expected to be repealed.

Protection of Competition

The Code broadens the criteria for determining a group of persons. Thus, in addition to the criteria provided previously by the Competition Law, a combination of individuals and/or legal entities meeting one or more of the following criteria will also be considered a group of persons:

---

1 From 1 January 2016, one (1) monthly calculation index amounts to 2,121 (two thousand one hundred twenty-one) tenge.
• a market participant and an individual or a legal entity, if one of such persons exercises functions of the sole executive body of the market participant, or has the right to issue binding instructions to the market participant;

• legal entities where over fifty (50) per cent of members of the executive board and the board of directors are the same individuals;

• a market participant and an individual or a legal entity, if the sole executive body of this market participant has been appointed or over fifty (50) per cent of members of the executive board or the board of directors of such market participant have been elected at the suggestion of such entity; and/or

• an individual and his/her close relatives.

The Code allows market participants to request a preliminary review of the draft agreement among market participants. Thus, market participants that intend to reach an “allowed agreement” in accordance with the Code may file an application to the antitrust agency along with the required documents in electronic form to verify that the agreement complies with the requirements of the Code. At the same time, the Code does not further clarify whether the applicants should attach evidence confirming that the agreement complies with the “allowable” requirement.

The Code sets out the definitions of terms that already existed in the Competition Law but which were not defined:

– “Sale of Goods with the Provision of False Information” means the sale of goods while providing false information on the nature, method, and place of production, consumer performance, quality and quantity of goods, and/or their manufacturers.

– “Incorrect Comparison by a Market Participant of Its Produced and/or Sold Goods with Goods Produced and/or Sold by Other Market Participants” means public comments, claims, or statements made in any form and by any means, where the market participant compares its own goods with the goods of other market participants (or lists its goods as being similar to goods of other market participants), including by using a superlative comparison in the absence of documented confirmation of the claimed superiority of its own goods over the competitive goods (or in the absence of documented confirmation that its goods can justifiably be stated as similar to goods of other market participants).

The list of prohibited vertical agreements has been extended. Whereas the Competition Law only contained a prohibition on preventing the buyer (client) from selling the goods of a market participant that is a competitor of the seller, the Code also prohibits agreements binding the seller not to sell goods to a market participant who is a competitor of the buyer (client).

The list of completely or partially invalid anticompetitive agreements among market participants has been expanded, where such agreements economically, technologically, or otherwise unreasonably establish different prices (tariffs) for the same goods.
It should be noted that changes introduced by Law No. 312-V ZRK “On Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding Natural Monopolies and Regulated Markets” dated 5 May 2015 to the Competition Law and Law No. 272-I “On Natural Monopolies and Regulated Markets” dated 9 July 1998 with regard to notification of antitrust agency of national monopolies' carrying out activities unrelated to regulated GWS were also reflected in the Code. Thus, natural monopolies should notify the antitrust agency of the matter not later than ten (10) business days from the beginning of carrying out activities unrelated to those regulated GWS. This provision becomes effective on 1 January 2017.

It should also be noted that the antitrust agency's competence with regard to (i) monitoring the activity of market participants that have a dominant or monopoly position, and (ii) determining the boundaries of the respective product markets when market entities that have a dominant or monopoly position in the regulated markets are established or recorded in the State register, will remain effective until 1 January 2017.

Protection of Businesses' Rights

- The Code systematizes the following forms of protection of businesses' rights:
  - judicial, in accordance with the Civil Procedural Code;
  - out-of-court settlements;
  - non-judicial forms:
    - arbitration, in accordance with the procedure established by law;
    - mediation, in accordance with the procedure prescribed by the Law "On Mediation";
    - in accordance with the participatory procedure without a judge through negotiations between the parties with a view to facilitating dispute settlement by attorneys of both parties. The participatory procedure became effective on 1 January 2016 under the new Civil Procedural Code.

Commissioner for Protection of Businesses' Rights

- The Code introduces the institution of Commissioner for Protection of Businesses' Rights (the "Business Ombudsman") in order to represent, serve, and protect the rights and lawful interests of entrepreneurs before the government authorities.

- The Business Ombudsman is accountable to the President of Kazakhstan and annually submits a report on its work on protecting businesses' rights to the President. Such reports are to be published in the mass media.

- The Business Ombudsman is appointed by a decree of the President of Kazakhstan for a period of four (4) years. This person should be a Kazakhstani national, have a university degree, and have professional experience of no less than five (5) years in the protection of rights and lawful interests of entrepreneurs.
Business Ombudsman's functions:

- handling requests of businesses;
- submitting suggestions to the government authorities related to protecting businesses' rights and recommendations on the suspension of legal acts;
- submitting recommendations to the government authorities on measures to redress businesses' rights and lawful interests that have been violated by the government authorities, action/omission of which resulted in violation of rights and lawful interests of businesses, including bringing to responsibility of persons guilty of violation of rights and legal interests of businesses;
- filing applications to prosecutor's offices in case of disagreement with an opinion of the government authorities for further restoration of violated rights of entrepreneurs;
- submitting requests for consideration by the President of Kazakhstan in the event of systematic violations of rights of entrepreneurs, when it is impossible to resolve these issues at the level of the respective government authorities;
- requesting information, documents, or materials from the government authorities related to the rights and obligations of businesses, except for information comprising State, commercial, banking, or other secrets protected by law;
- filing claims in court in accordance with the procedure established by Kazakhstan law.
Contact information

We hope that you found this overview helpful. If you would like our assistance, please contact us as follows:

Dinara Tanasheva  
Partner, Law Services Leader  
Tel.: +7 727 258 5960  
dinara.s.tanasheva@kz.ey.com

Altynay Tanasheva  
Senior Associate, Tax & Law Services  
Tel.: +7 727 258 5960  
altynay.tanasheva@kz.ey.com

Tatyana Lee  
Associate, Tax & Law Services  
Tel.: +7 727 258 5960  
tatyana.lee@kz.ey.com