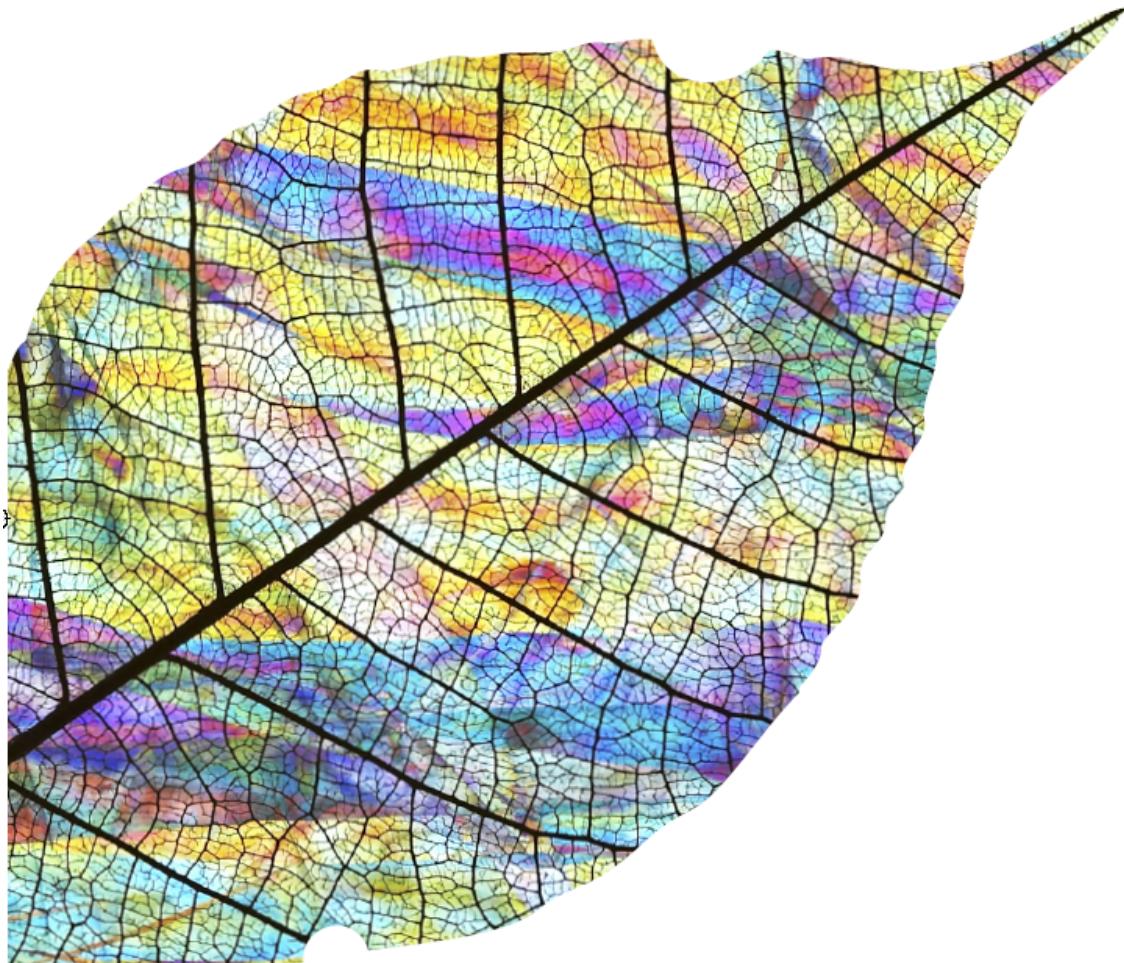


World Universities Comparative Law Project

Legal rating of Kazakhstan

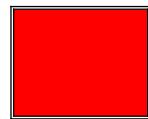
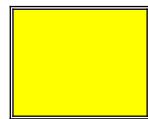
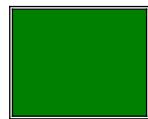
carried out by KIMEP University

A production of the Allen & Overy Global Law Intelligence Unit



December 2016

World Universities Comparative Law Project
Legal rating of Kazakhstan
carried out by students at
KIMEP University
December 2016



Produced by the Allen & Overy Global Law Intelligence Unit

World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Kazakhstan was carried out by students at the KIMEP University.

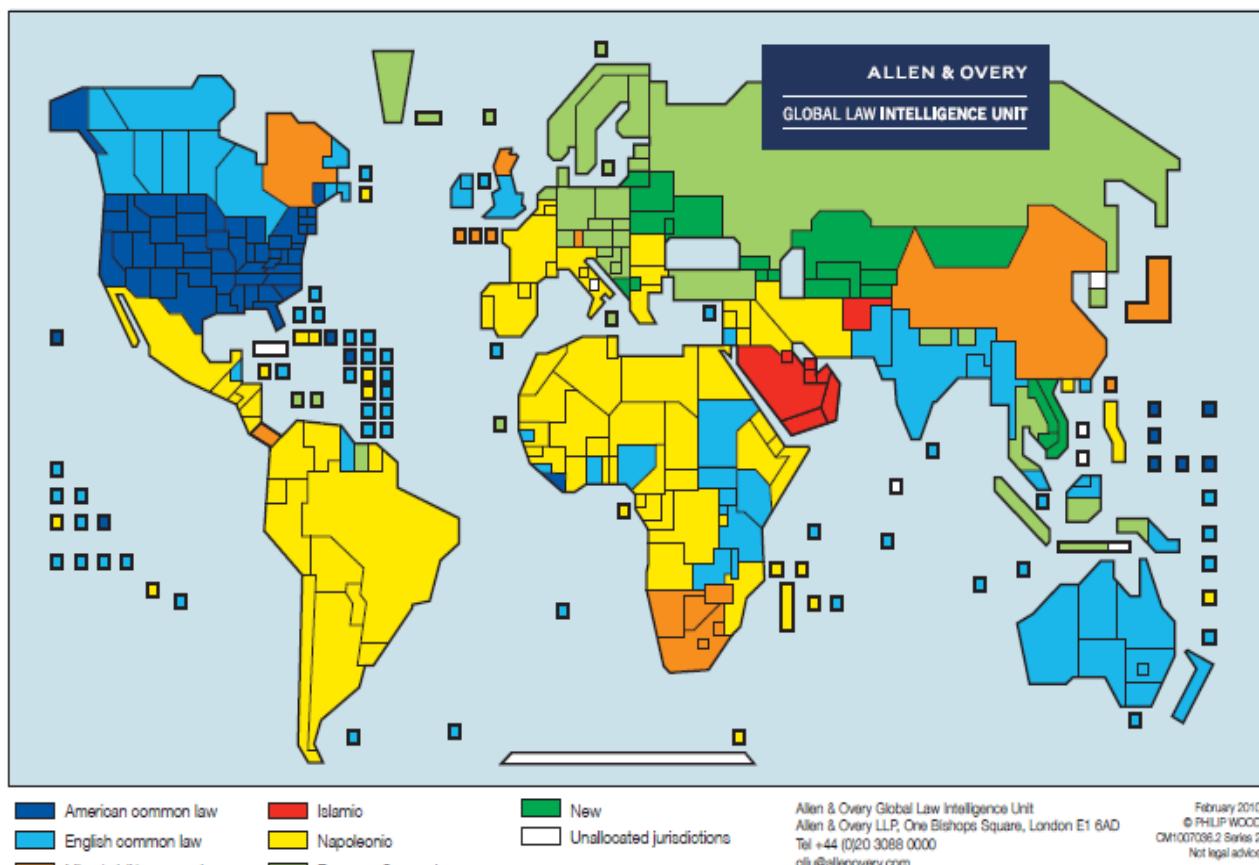
The member of the Faculty of Law at the KIMEP University who assisted the students was Assistant Professor Zhanat Alimanov.

The members of the Practitioner Expert Panel with whom the students could discuss the questions in the survey were Gulmira Kuanzhanova, Arman Tastanbekov of Egen Gregory LLP and Dinara Jarmukhanova of Centil Law Firm.

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

by Joseph Luke, Dean, School of Law, KIMEP University

The KIMEP University law school is approaching its ten year anniversary. When it opened it declared its mission was to develop legal skills through practice based on a foundation of theoretical knowledge. It sought models of teaching from other countries to introduce into domestic legal education and continues to seek innovation. The law school is always looking for ways to expand its students learning experiences outside of the classroom. The opportunity afforded by The World Universities Comparative Law Project is very much in the spirit of our goals of teaching critical, analytical thinking and communication skills in and for a legal setting.

The result of the students' hard work speaks for itself and I am sure that the report will be useful to all who consult it. Many people had to come together to produce this report. I am in deep admiration of the students who participated in this project and congratulate them on a job well done. I am also grateful to Assistant Professor Zhanat Alimanov for bringing this project to KIMEP and acknowledge his work in guiding this student endeavor. In addition I wish to express a special thanks to Gulmira Kuanzhanova, Arman Tastanbekov of Egen Gregory LLP, and Dinara Jarmukhanova of Centil Law Firm who served as the Practitioner Expert Panel and with whom the students could discuss the questions in the survey. I am grateful to Allen & Overy for giving students across many countries a possibility to hone research writing skills.

Foreword by the students

To understand better the detailed analysis of Kazakh legal system from the various perspectives described in the project, it is important to provide a general introduction to the legal system of Kazakhstan and its history.

Kazakhstan belongs to the Roman - Germanic group where the Civil Code serves as basis of civil law. Kazakh law emerged in the period of establishment of Kazakh Khanate (15th century). Before Imperial Russia gained Central Asian territory, customary law (as codified by Khan Tauke, known as Adat) was in force. As the result of Russia annexing Kazakh lands Russian civil law spread through Kazakh territory. In the initial period, Kazakh customary law still retained some force. However, gradually, the role of Russian law in civil relations was significantly strengthened and customary law lost its position as an official source of law. The policy of full excision of Kazakh customary law was vigorously executed immediately following the October Revolution and with the establishment of Soviet power. In particular, at the end of 1930s the customary law evolved from an official source of law into ordinary customs not sanctioned by the state. Within the period of existence of USSR, its Constitution was considered as its fundamental law. On the USSR's territory, the Civil Code of RSFSR spread its legal force. Subsequently, the Kazakh SSR was established on the basis of the USSR's Constitution and the Civil Code of the RSFSR continued to have legal force on the territory of this new state.

As the result of the reformation process, a new stage of development of the Civil law developed. The adoption of the Declaration of State Sovereignty of Kazakh SSR on October 25, 1990, completed the process of reformation. The Declaration established the priority of the Kazakh SSR's legislation of over that of the USSR's. Kazakhstan continued to be a part of Civil Law system after independence on December 16, 1991, retaining the basic legal norms of both the USSR and Kazakh SSR.

Kazakhstan's modern legal system has been formed as a well-functioning, sustainable system providing for the effective legal regulation of economic relations between parties in the state. The modern legal system in Kazakhstan has a strict hierarchical structure. No lower-level legal act can contradict any higher-level legal act. The Constitution of Kazakhstan is at the top of the hierarchy and regulates fundamental rights and freedoms of Kazakhstan's citizens. Other functional law of Kazakhstan includes laws introducing amendments to the Constitution, Constitutional laws, decrees of the President, Codes, and resolutions of Parliament.

To fit to the standards of International Government Organizations, the Kazakhstan legal system is constantly changing and developing. In this project we approach all analysis from different perspectives among which are issues of the practical applicability of legislation, general principles of each regulation, and trends in formation of law.

We would like to express our sincere gratitude to the people who assisted and guided us throughout the project, namely, Zhanat Alimanov, Gulmira Kuanzhanova, Arman Tastanbekov and Dinara Jarmukhanova. We would also like to thank Philip R. Wood and Melissa Hunt for providing us this opportunity to perform a comparative analysis of legal risk taking in Kazakhstan.

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Kazakhstan with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at KIMEP University. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of KIMEP University, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:

True		False		Can't say
				

Blue generally means that the law does not intervene and the parties are free, i.e. the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and yellow are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Kazakhstan. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, e.g. that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations

as borrowers, when it matters, i.e. on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

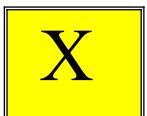
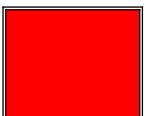
This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Kazakhstan, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True	False	Can't say
		
		

Comment

In accordance with the Statute of the Republic of Kazakhstan on Rehabilitation and Bankruptcy («Statute on Rehabilitation and Bankruptcy»), offset is not allowed from the initiation of a rehabilitation or bankruptcy procedure to the implementation of the rehabilitation procedure or until recognition of the debtor as bankrupt.

If the offset is direct, mutual, without involvement of any other party, related to monetary claims, and does not violate the priority of creditors' claims; it may take place after the implementation of the rehabilitation procedure or recognition of debtor as bankrupt. The rehabilitation or bankruptcy manager must inform the creditor about such an offset.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or

by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Kazakhstan, the law offers a security interest which is highly protective of the secured creditor.

True	False	Can't say
<input type="checkbox"/>		
<input checked="" type="checkbox"/>		
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	

Comment

The Civil Code of the Republic of Kazakhstan («Civil Code») lists the following methods for securing an obligation: penalty, pledge, surety, guarantee, deposit, withholding the debtor's property, guarantee deposit. Generally, according to the current legislation, securities grant priority to a secured creditor over other creditors. However, it is hard to say that a secured creditor is highly protected: current legislation grants a secured creditor only a third-priority basis in the priority of claims. According to the Civil Code and the Statute on Rehabilitation and Bankruptcy, when liquidating a legal entity, the claims of its creditors are to be satisfied as follows:

- (1) first priority claims: the claims for payment for aliments withheld from wage and (or) other income, the claims of citizens for compensation of harm to life and health;
- (2) second priority claims: the claims for compensation to workers, withheld pension contributions, remuneration on copyright contracts;
- (3) third priority claims: the claims concerning the obligations, secured by pledge within the amount secured. Exception: the claims of holders of the mortgage bonds, secured by pledge on the basis of mortgage housing loan agreement (including mortgage certificate pledge);
- (4) fourth priority claims: taxes and other compulsory payments;
- (5) fifth priority claims: the claims of remaining creditors.

All claims of a higher priority must be completely satisfied before starting payments on claims of a lower priority.

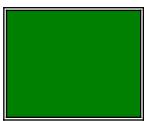
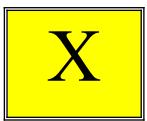
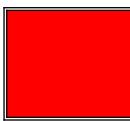
Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Kazakhstan has a universal trust for all assets.

True	False	Can't say
		
		

Comment:

There is no direct analogy of «trust» in the Kazakh legal system. However, there is a similar structure - Trust Management of Property. The main difference between the concept of trust in Roman-Germanic and Anglo-American system is that in Roman-Germanic system trust management of property does not presuppose transfer of the property rights of assets to the trustee.

According to the Civil Code the trust management of property presupposes that the trustee shall, on the beneficiary's behalf control the property that is transferred to his (her) possession, use and disposal, unless otherwise provided by contract or legislation, in the interest of the beneficiary.

In accordance with the Civil Code property a trust arises out of:

- 1) transactions (in particular, under a contract, according to a will, which appointed the executor (trustee);
- 2) a judicial act (by appointment of the rehabilitation manager in bankruptcy proceedings, custody of the estate of an incapacitated, missing or deceased citizen, and in other cases, as stipulated by legislative act);
- 3) an administrative act (in the establishment of guardianship of the estate of a minor, deceased; admission entrepreneur in the public service and in other cases, stipulated by legal acts).

According to the Civil Code the object of trust management can be any property, including cash, securities and property rights. Some exceptions apply (e.g. trust management of property cannot be established with regard to the property based on operational or business management).

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Kazakhstan the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comment

Generally, partners/shareholders are not liable for the debts of the company. However, according to the Statute on Rehabilitation and Bankruptcy, partners/shareholders/directors shall bear subsidiary liability before creditors for premeditated bankruptcy. The Statute on Rehabilitation and Bankruptcy defines premeditated bankruptcy as an intentional increase of insolvency, committed by actions or omissions of the founder (partner/shareholder), or official body of the legal entity. Directors and officials shall reimburse damages of the owner for premeditated insolvency.

If a debtor filed for insolvency with the goal of false bankruptcy, creditors can demand reimbursement of damages from the debtor. Also they may apply to the court on questions of associate liability of directors/officials and other entities that issued such a decision. The Statute on Rehabilitation and Bankruptcy defines false bankruptcy as deliberately false notification on its insolvency as the result of actions and (or) the decisions taken by the founder (participant), official bodies of a legal entity, with the purpose to mislead the creditors and to receive deferred or installment payments or discount of debt, as well as non-payment of debts.

It should also be mentioned that directors/partners/officials or other entities can be held liable for premeditated or false bankruptcy in accordance with Administrative and Criminal Codes of the Republic of Kazakhstan.

In accordance with the Statute on Rehabilitation and Bankruptcy a debtor must apply to court in order to declare himself bankrupt in the following cases:

- (1) when there is a decision on liquidation issued by the owner of the property or authorized body of this legal entity and there are not enough assets to cover the claims of creditors completely;
- (2) if covering the claims of a creditor/creditors leads to the impossibility of fulfilling other monetary obligations before other creditors in the full amount;
- (3) to apply to the court with the question of declaring as bankrupt from the day when debtor knew or should have known about insolvency except for the case when there is an effective decision of the court on settlement of insolvency.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

Q5 Kazakhstan permits a company to grant financial assistance for the purchase of its own shares.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comment

The issue is not well developed in the Kazakhstan legal system. There are no explicit restrictions to a company on providing any type of financial assistance to buy its own shares.

However, it is likely that Kazakhstan as a part of Roman-Germanic system would prohibit any provision of such financial assistance to companies.

Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in **Kazakhstan** is open and has few restrictions.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comment

Public takeover in Kazakhstan has some features of a restrictive regime. All takeover bids must follow a strict set of rules, mostly on equal treatment, disclosure and timing restrictions.

According to the Statute on Joint Stock Companies, a person who intends to purchase 30% or more of the voting shares of a company or any other number of voting rights, the acquisition of which will give him 30% or more of the voting shares, must send a notice to the company and the National Bank of Kazakhstan 10 days prior to the purchase. The notification must contain information about the number of shares to be

acquired, the proposed purchase price and other information as determined by the National Bank of Kazakhstan.

In addition, any person who has acquired 30% or more of the voting shares of a Company, must, within thirty days from the purchase, publish in the media the proposal to other shareholders to sell their shares in the company on the same price.

Moreover, since the decision to sell or purchase shares is made only by shareholders, managers cannot influence or frustrate the bid.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

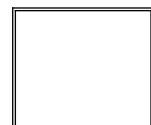
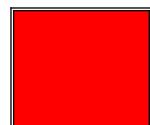
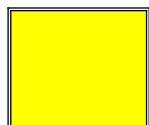
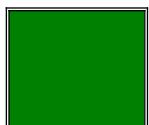
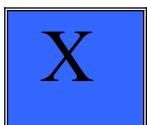
Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Kazakhstan, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or other such clear phrase.

True

False

Can't say



Comment

In accordance with the Civil Code there are three types of contracts: main contract, preliminary contract and heads of terms.

The main contract is deemed concluded when: (1) all essential terms of the contract have been agreed upon by the parties, (2) when the offer of one party that contains all essential terms, was accepted by another party. After concluding the main contract, parties are automatically bound by its terms.

With the conclusion of the preliminary contract, the parties oblige themselves to conclude the main contract within the agreed period and on the terms stipulated in the preliminary contract. However, if one of the parties evades conclusion of the main contract, it must reimburse all incurred losses of the other party.

The heads of terms in Kazakh legal system is not considered a contract and therefore the parties are not bound by any legal consequences that may arise out of it. However, the parties should explicitly state that they have no intention of giving the document the force of a preliminary contract.

Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Kazakhstan, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True	False	Can't say
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comment

Given freedom of agreement, parties are free to negotiate on all terms of contract, including termination clauses, as long as the terms do not violate any legislation. According to the Civil Code, termination of a contract can be done in three ways:

- (1) upon the agreement of both parties to terminate the contract;
- (2) by the request of one party through court proceedings;
- (3) by the conditions of the contract.

Therefore, if parties agree on specific events for termination in the contract itself, such provisions are upheld.

Exclusion clauses

Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In **Kazakhstan**, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comment

In accordance with the Civil Code, a debtor is liable for non-fulfillment or improper fulfillment of his obligations if he is at fault. In accordance with the Civil Code, fault or liability means that the debtor did not take all possible measures to fulfill all of the obligations properly. So, if the debtor took all possible measures to fulfill his obligations completely, he is not liable for losses of any other party connected to breach of the contract.

Additionally, a debtor is not liable if discharge of his obligations was not possible due to extraordinary and unavoidable circumstances (such as natural disasters, war, etc.).

The contract may include other grounds for exemption from liability and therefore parties are free to negotiate and agree upon such grounds. If the contract includes a provision on exemption of liability, such provision is upheld, given that it does not contradict any Kazakhstan legislation.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The **Kazakhstan** courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Kazakhstan's public policy and legislation.

True



False



Can't say



Comment

If the party submits proper evidence of what the foreign law states, the court will have to apply the relevant law. While Kazakhstan's legal system provides tools to help the courts apply foreign legislation, the application of foreign law is usually complicated in practice. If the court does not follow prescribed legislation with regard to the application of choice of foreign law, the appellate court may overturn its judgment.

Foreign jurisdiction clauses

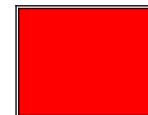
Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The **Kazakhstan** courts will generally uphold a clear submission to the exclusive jurisdiction of a foreign country's courts in a loan or sale of goods contract between sophisticated companies even if there is no connection between that country and the contract.

True



False



Can't say



Comment

The Civil Procedure Code of the Republic of Kazakhstan («Civil Procedure Code») provides rules for when Kazakhstan's courts have exclusive jurisdiction over a case. Apart from those cases, according to the Civil Procedure Code any company may submit its dispute to courts of a foreign country. Kazakhstan's legal system does not require the contract to have a connection with the relevant country in order to submit disputes to the courts of that country. However, a problem will likely arise with recognition and enforcement of the said court decision in Kazakhstan, as sometimes Kazakhstan courts are reluctant to recognize such rulings. Indeed, foreign court judgments will not be recognized if there is no treaty on recognition and enforcement between Kazakhstan and the relevant country.

Arbitration recognition

Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Kazakhstan, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of Kazakhstan's courts.

True	False	Can't say

Comment

Kazakhstan's courts allow all parties (whether sophisticated or not) to submit their disputes to foreign arbitration instead of to a Kazakhstan court. An exception applies when the dispute may not be arbitrated (as set out in the Statute on Arbitration) or if they are subject to the exclusive jurisdiction of Kazakhstan's courts (as listed in the Civil Code).

Arbitral awards are recognized and enforced in Kazakhstan unless the award is in breach of public order, the respondent was not properly notified about procedure, or due to any other reason allowed under the New York Convention.

Class actions

Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In Kazakhstan, class actions where the class is bound if they do not opt out are generally not allowed.

True	False	Can't say

Comment

According to the Civil Procedure Code, an action may be brought by several plaintiffs or several defendants. Each of the plaintiffs or defendants participates in the proceedings independent of other plaintiffs or defendants. The parties may entrust the conduct of the case, respectively, to one of the co-plaintiffs or co-defendants. This means that in order for one plaintiff to be able to file a claim on behalf of all plaintiffs, the plaintiffs must explicitly entrust this to the plaintiff.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Kazakhstan nationals and local corporations are entitled to own land absolutely.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comment

In accordance with the Land Code of Kazakhstan («Land Code»), Kazakhstan recognizes and protects state and private property equally. The Land Code also provides that local private entities are entitled to own land. However, there are certain limitations to the property right of Kazakhstan citizens and local legal entities provided by the Land Code. In particular, there is an exhaustive list of categories of land plots established by Article 23 of the Land Code that can be provided for private ownership of the nationals and local legal entities. Those are, in particular, lands for the management of the farm economy, of personal subsidiary economy, forest cultivation, gardening, and individual housing construction - for individuals and lands provided for construction and occupied by industrial, non-production and residential buildings, including those intended for building maintenance, or lands of commercial agriculture – for legal entities. Categories of land that are not included in the above list cannot be owned by citizens and legal entities of Kazakhstan.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, e.g. Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not

generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in **Kazakhstan** is registered in a land register which records most major interests in land, e.g. ownership, mortgages and longer-term leases.

True	False	Can't say
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comment

Title to land in Kazakhstan is subject to state registration in accordance with the Statute on State Registration of Rights on Immovable Property (Article 4 of the Land Code). Registering the land is a preliminary condition for title and other rights connected to the land to be registered. In particular, all rights and encumbrances to land are subject to state registration including ownership, right of business authority and operational management, pledge, leases for a term exceeding 1 year, easement and other rights that can be registered based on the personal desire of owners (Article 4 of the Statute).

Land development restrictions

Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In **Kazakhstan**, apart from environmental controls (discussed below), the control of commercial development and the change in the use of land is very light and, where required, permits are quick and cheap to obtain.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comment

There is sufficient control of commercial development and change of use of the land and there is strictly established procedure for obtaining special permits in Kazakhstan. In particular, the Land Code (Article 49-1) requires a special procedure for the change of the designated use of a piece of land. This procedure includes filing an application, a determination of the possibility of usage as requested by the applicant, preparation of a report by the committee established by local executive bodies, drafting of cadastre plan for the aim of construction, making the decision by the respective local executive organ and finally, the preparation of identification documents for the property. This is a time consuming procedure since the application is considered within 30 days and other subsequent procedures can take 15 to 20 days.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Kazakhstan, there are few controls on hiring and firing employees or on the terms of employment.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comment

In Kazakhstan the process of hiring and firing of employees is strongly regulated by the state through the Labor Code. Each person has the possibility to freely choose the place and type of work and is not subject to any discrimination in labor. There are minimum guaranteed social standards that include a minimum monthly wage (currently 22,859 tenge), duration of daily work, and basic paid annual leave, in accordance with Statute on Minimum Social Standards and Guarantees.

The Labor Code provides for various types of terms of employment, which are indefinite or fixed. Fixed terms are established for not less than 1 year, although there are some exceptions. For example, the person can be employed for the term of execution of particular work; term of replacement of missing employee; term of performance of seasonal work (Article 30 of the Labor Code).

The procedure for firing employees, compared to hiring, is more complicated since it requires special grounds to be present before the employer is allowed to fire a particular employee. The list of these grounds was updated in accordance with introduction of the new Labor Code in January 2016 (Article 52 of the Labor Code). These new grounds allow an employee to be terminated whenever the employer wants. Reasons for termination include a decrease of the volume of production, work performed and services rendered, which have led to a worsening of the employer's economic situation. These grounds can serve as a basis for an employer to terminate an employee since the «economic situation of employer» is a tax secret that can be neither controlled nor verified.

Environmental restrictions

Q18 In Kazakhstan the rules governing the environment and liability for clean-up are very light and relaxed.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comment

Permissible emission level and terms of special use of the natural resources of Kazakhstan are strictly regulated by the Environmental Code of the Republic of Kazakhstan («Environmental Code») and its subordinate regulations. Environmental regulations are established on the basis of the acts of authorized state bodies, international standards, and are mandatory. Violations of environmental laws and regulations carry administrative and criminal liabilities,

Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

Foreign direct investment

Q19 In **Kazakhstan** foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>

Comment

Direct investments are subject to mandatory registration. Some aspects of foreign direct investment are hardly regulated by legislation. Depending on the field of investment, different ministries or National Bank may act as the direct regulator, limiting some authorities of international owners. However, the overall investment policy of the country is very flexible. Currently Kazakhstan is attracting international investment, thus foreign ownership and control of companies is widespread.

Exchange controls

Q20 In **Kazakhstan**, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/> X	<input type="checkbox"/>

Comment

Kazakhstan has specific regulations and specialized authorized bodies headed by National Bank of Kazakhstan, which are in charge of the state exchange control, it is established that exchange contracts (\$500,000 US or more) are subject to registration or notification in the National Bank. The choice of banks

for exchange contracts is established by the regulator, which means that the National Bank is authorized to recommend (but enforce in practice) parties to use exchange services of certain banks. Borrowing in foreign currency is not restricted. Repatriation is mostly applicable to residents. Businesses registered in Kazakhstan must have a local bank account. However, they are not limited in owning foreign bank deposit accounts.

Alien ownership of land

Q21 In **Kazakhstan**, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comment: Foreign-controlled companies do not have the same rights to own or lease land as domestic companies. It is presumed by the legislation that it is impossible for foreign-controlled companies to acquire ownership right to land used for agricultural purposes; however Kazakhstan citizens are allowed to do so. As a result companies usually make long-term land-lease agreements if they want to use the land for purposes that lie within the terms established by Kazakhstan's regulations.

Generally, foreign-controlled companies can only own land for the construction of buildings and the attached land to serve that building. Land and any immovable building/construction are considered to be an indivisible unit.

Application of the law

Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In **Kazakhstan**, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True	False	Can't say
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comment

In Kazakhstan, higher courts tend to treat big businesses and foreigners more fairly than local courts do. Despite this Kazakhstan's court system struggles with problems of high levels of corruption and incompetent judges. Therefore, the situations where judges favour local interests over foreigners are common practice. However, there is no preferential treatment as between individuals and businesses, Courts, both local and high, treat individuals and business equally fairly.

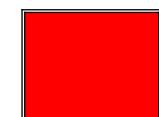
Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in **Kazakhstan** are not considered materially greater than in other comparable countries.

True



False



Can't say



Comment

The costs of commercial litigation in Kazakhstan are the same or similar. The costs of commercial litigation in Kazakhstan are relatively low, but they may be multiplied due to the need for lawyers.

Additionally, because of the bureaucratic nature of the Roman-Germanic legal system, the proceedings may be delayed multiple times for various reasons, but generally, the Civil Procedure Code provides that decisions on civil cases must be made within a maximum of two months. This limit may vary according to the nature of the dispute.

Overall ranking

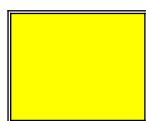
This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	Yellow
2.	Security interest	Dark Green
3.	Universal trusts	Yellow
4.	Director liability for deepening insolvency	Yellow
5.	Financial assistance to buy own shares	Yellow
6.	Public takeover regime	Yellow
7.	Exclusion of contract formation	Blue
8.	Termination clauses	Blue
9.	Exclusion clauses	Dark Green
10.	Governing law clauses	Blue
11.	Foreign jurisdiction clauses	Dark Green
12.	Arbitration recognition	Blue
13.	Class action	Dark Green
14.	Ownership of land	Dark Green
15.	Security of land title and land registers	Blue
16.	Land development restrictions	Yellow
17.	Employment law	Red
18.	Environmental restrictions	Yellow
19.	Foreign direct investment	Dark Green
20.	Exchange controls	Yellow
21.	Alien ownership of land	Yellow
22.	Court treatment of foreign big business	Dark Green
23.	Costs and delays of commercial litigation	Dark Green

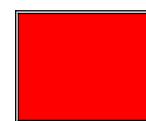
True



False



Can't say



Commentary and suggestions for change

Secured creditors

Currently the protection of interests of secured creditors is weak. As mentioned above, the secured creditors, holding only a third priority, suffer high risks of non-payment.

Driven by social considerations, legislation gives preference to the claims of employees for payment of their salaries, gratuities and payment for harm to life and health caused by the liquidation of an enterprise. However, taking into consideration foreign experience, the issue is worth reformation by granting secured creditors the first or at least second priority, while the question of protection of employees could be solved by highly developed insurance system.

Litigation

Many foreign investors turn away if they are forced to settle disputes in Kazakhstan's local courts, notorious for their corruption. Putting the topic of corruption aside, in order to make an economy attractive for investments, risks such as the ones mentioned above need to be mitigated by increasing transparency in local courts. Currently, recognition of foreign court decisions in Kazakhstan is inconsistent; this issue has to be addressed if we are looking to go further with our integration into international society. Though the fact that foreign arbitration decisions are now enforced is obviously a big step forward, Kazakhstan still has a long way to go in terms of subduing its will to keep its legislative supremacy. If we want regional and international integration, we have to continue harmonizing our legal system with the rest of the world.

Land issues

Concerning the legal regulation of land relations, there are some aspects that have to be improved. In particular, the Land Code provides limitation of private property for land. As a result, only insignificant parts of land plots belong to individuals and corporations on the basis of private property. Therefore, it is important to incorporate changes into that part of land legislation in order to consider and protect the interests of business entities with high levels of industry production. We assume this is one of the key elements to guarantee development of business organizations and the correspondent development of economy of Kazakhstan.

Environmental issues

Ecology has always been a big issue for the Central Asian region and we strongly believe that the need to sustain our nature far surpasses the need to exploit it for economic growth. To reach that goal, however, in our opinion protection has to start from legislation. But even after relevant legal acts are adopted they will often lack proper implementation. For example, currently, the Environmental Code has multiple provisions that lack an effective operational mechanism: they are basically of a declarative character.

Transparency

Although Kazakhstan has actively worked to attract foreign capital for a long time, it is still not a country that most foreign investors are familiar with. For this reason, many Kazakhstan companies incorporate foreign holdings in more comfortable jurisdictions. Trust can only be achieved through a transparent legislative system, especially in the financial sector. Economic growth is only possible when the stakeholders and creditors can be sure that their interests are highly protected by the law.

Profiles

Students

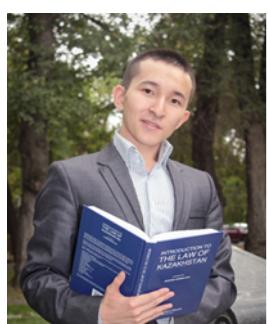
The survey was carried out by the following students:



Aigerim Raikhanova is a graduate of KIMEP University School of Law. She received a Bachelor's degree in 2016 with Summa Cum Laude. Her fields of interest are business, corporate and financial law. Aigerim worked as a Teaching Assistant at KIMEP University School of Law during her term of study and served as a volunteer at the first Kazakhstani Legal Clinic at KIMEP University. She also has experience working as a legal intern at a leading Kazakhstani Law Firm GRATA. Aigerim speaks four languages: English, Russian, Kazakh and Turkish. She was awarded a KIMEP University Academic Achievement Award in 2015 and 2016 for outstanding academic accomplishments. Aigerim can be reached at raikhanova.a@gmail.com



Asset Nakupov has completed his Bachelor's Degree in Law from KIMEP University. He is currently in an internship at Morgan Lewis, one of the most famous law firms in the world. His areas of interest are corporate law, private international law and contract law. Asset has been known to be a hard-working and responsible student throughout his four years in Law School, having interned at the Colibri Law Firm and the National Bank of Kazakhstan, as well as assisting in KIMEP Legal Clinic. He is looking forward to completing his studies at a post-graduate level. Asset can be reached at anakupov@bk.ru



Temirlan Toguzbayev is an honoured graduate of KIMEP University. During his education at KIMEP School of Law, he participated in various Case Competitions and Championships organized by the BIG 4 companies and Challenge partner corporations. By graduation from University he had held a position as a Teaching Assistant for 3 years, completed his military studies with rank of lieutenant, and took internships at Dentons multinational law firm and local consulting firms. Temirlan proved himself as self-motivated, hardworking and responsible person. His areas of interest include, but are not limited to, antitrust, banking, finance and private equity practices. Currently he is interning at Morgan, Lewis & Bockius. Temirlan has ambitions to continue his studies in the US. Temirlan can be reached at vermenganter@gmail.com



Saltanat Mukash graduated from KIMEP School of Law with Summa Cum Laude. During studies at KIMEP University she won second place in Civil Law at KIMEP Intellectual Olympiad, received the Academic Achievement Award and was awarded with the Nursultan Nazarbayev Presidential Stipend. She worked as a volunteer at the KIMEP Legal Clinic providing free oral and written legal consultations to vulnerable citizens and individuals. Additionally, she participated in the project organized by IS Paragraph and Legal Clinic which provided written consultations on different legal topics. She worked as a legal intern at such international law firms as Dechert, Morgan Lewis & Bockius and Dentons

focusing primarily at Corporate law. Saltanat can be reached on smukash166@gmail.com



Tatyana Khavratova is a fourth year student of KIMEP University Law School. Throughout her studies she has been known as an active, self-motivated, intelligent and responsible person. She held the position of Vice President of the KIMEP Legal Clinic from 2015 to 2016 and has participated in the KIMEP Moot Court Club since 2015. She also worked on the «Legal Literacy» project and participated in the Dean's Cup event, organized by KIMEP Legal Clinic and KIMEP Moot Court Club. She is the coordinator of a project, organized by KIMEP University and IS Paragraph, dedicated to provide free online legal consultation to the local population. She is currently involved in work on Improving Anti-Corruption Legislation Project organized by the Center for International Private Enterprise (CIPE) and the Kazakhstan Bar Association (KazBar). She has been working as a Teaching Assistant since September 2015 and is currently taking an internship at Egen Gregory LLP. Tatyana can be reached at tatyana.khavratova@kimep.kz

Faculty Supervisors

The survey was supervised by the following faculty members:



Zhanat Alimanov is an assistant professor of KIMEP Law School. Throughout his career he has occupied several management and director's positions. He is currently a Board member of the Development Bank of Kazakhstan, Kazakhstan Investment Fund and Kazakhstan Bar Association. He used to hold the office of Executive Director at Sapienti Group, Head of the Executive Board at the Kazakhstan Association of Independent Directors, and member of the Board of Directors at the Kazakhstan National Company «SPK «Saryarka». He earned his LLM degree from Duke University School of Law (USA). He is admitted to practice in the state of New York, USA (New York Bar).

Members of the Practitioner Expert Panel

The survey was reviewed by the following expert practitioners:



Gulmira Kuanzhanova is a lawyer and an international development professional with over 10 years of experience managing aid programs implemented by USAID, IFC and UN agencies. Specifically, her portfolio included the projects that focused on the promotion of the rule-of-law, judicial reform, business enabling environment and rural development in three Central Asian countries. During her career in international development, she has counselled on legal and policy matters as they pertained to respective aid programs. Overall, Gulmira's professional career includes employment in the

public sector, the banking sector and international organizations. She holds a Master of Laws (LLM) Degree with concentration in International Trade and Foreign Investment Law from the University of Ottawa.



Arman Tastanbekov is a leading lawyer from AM law 100 firms admitted to practice in the U.S. and Kazakhstan. His practice mainly focuses on M&A, subsoil use, dispute resolution and capital markets. He has worked on projects across various industries representing domestic and multinational companies and financial institutions. Throughout his career Arman was a partner with the following law firms: White & Case, Reed Smith and currently – Egen Gregory. Arman graduated with highest honours from the Kazakh State Law University and earned his LLM degree from the American University Washington College of Law.



Dinara Jarmukhanova is a partner at Centil Law Firm and heads up the firm's Kazakhstan practice. Prior to joining Centil Law in January 2016, Dinara was one of the top legal counsel at a major international law firm in Kazakhstan. Dinara has 15 years of extensive experience in diverse corporate and transactional work for clients in the oil and gas, telecoms, banking and construction sectors, among others. Her work includes transactional and international dispute resolution, along with M&A, corporate restructuring, financial transactions, joint venture agreements and investments. Dinara was included in the UK's Best Lawyers list of outstanding lawyers for 2015 following her work on international arbitrations in London in 2013 and 2014. In addition to practicing in Kazakhstan, she is admitted to the New York Bar, having studied at both the Duke University School of Law (USA) and the University of Cambridge (UK).

KIMEP School of Law

KIMEP University was founded as Kazakhstan Institute of Management, Economics and Strategic Research in 1992. It was the first Central Asian institution of higher learning providing Western style education with English as its language of instruction. Through the years, the institute expanded its activities and has become a university.



The Law School is KIMEP's most recent addition to its faculties. Starting with the LL.M in International Law, it has since added two LL.B programs; one in International Law and one in Jurisprudence. The LL.M has been accredited by a European accrediting agency and the law school will work towards accreditation of the LL.B in Jurisprudence next year, its first year of eligibility (the International Law bachelor's program was opened in 2015 and, thus, is not yet eligible for accreditation).



KIMEP's teachers are a mix of full time faculty with advanced Western degrees and practitioners with experience in legal practice in Kazakhstan. It is the mission of the school to provide local content with global best practices in teaching. This means that the faculty strives to provide students with skills as well as theory. With this aim, the school offers not only traditional courses but those in writing and legal reasoning as well as encouraged such activities as moot court competitions and a legal aid clinic where students can practice the skills necessary to be successful in their chosen careers.

In 2017 the School of Law will have 9 full-time academic staff members, a large pool of part-time teachers and approximately 300 students.

Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenover.com or Melissa Hunt, melissa.hunt@allenover.com.

Philip R Wood CBE, QC (Hon) BA (Cape Town), MA (Oxon) LLD (Lund, Hon)

Head, Allen & Overy Global Law Intelligence Unit

Special Global Counsel at Allen & Overy LLP

Visiting Professor in International Financial Law, University of Oxford

Yorke Distinguished Visiting Fellow, University of Cambridge

Visiting Professor, Queen Mary University, London

Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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