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IV Investors' Voice

The American Chamber of Commerce in Kazakhstan

Kazakhstan's leading International Business Association

July 2021
SUMMER ISSUE
#94

The Reform Agenda for Kazakhstan's Economic Recovery



- Global Economic Perspectives 2021
- Rule of Law/ Judicial Reform
- Anti-Monopoly Law Update
- Combating Corruption: A Necessity
- Fair Competition: A Level Playing Field
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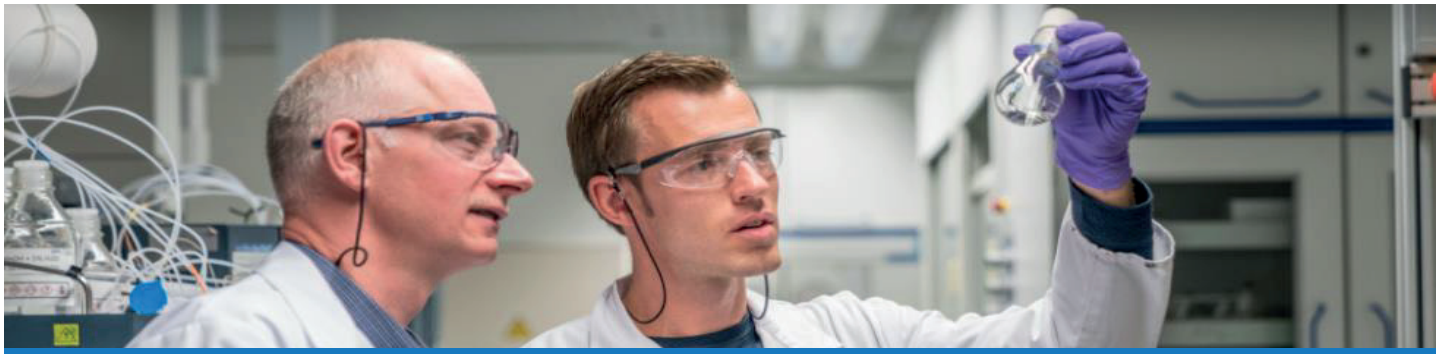
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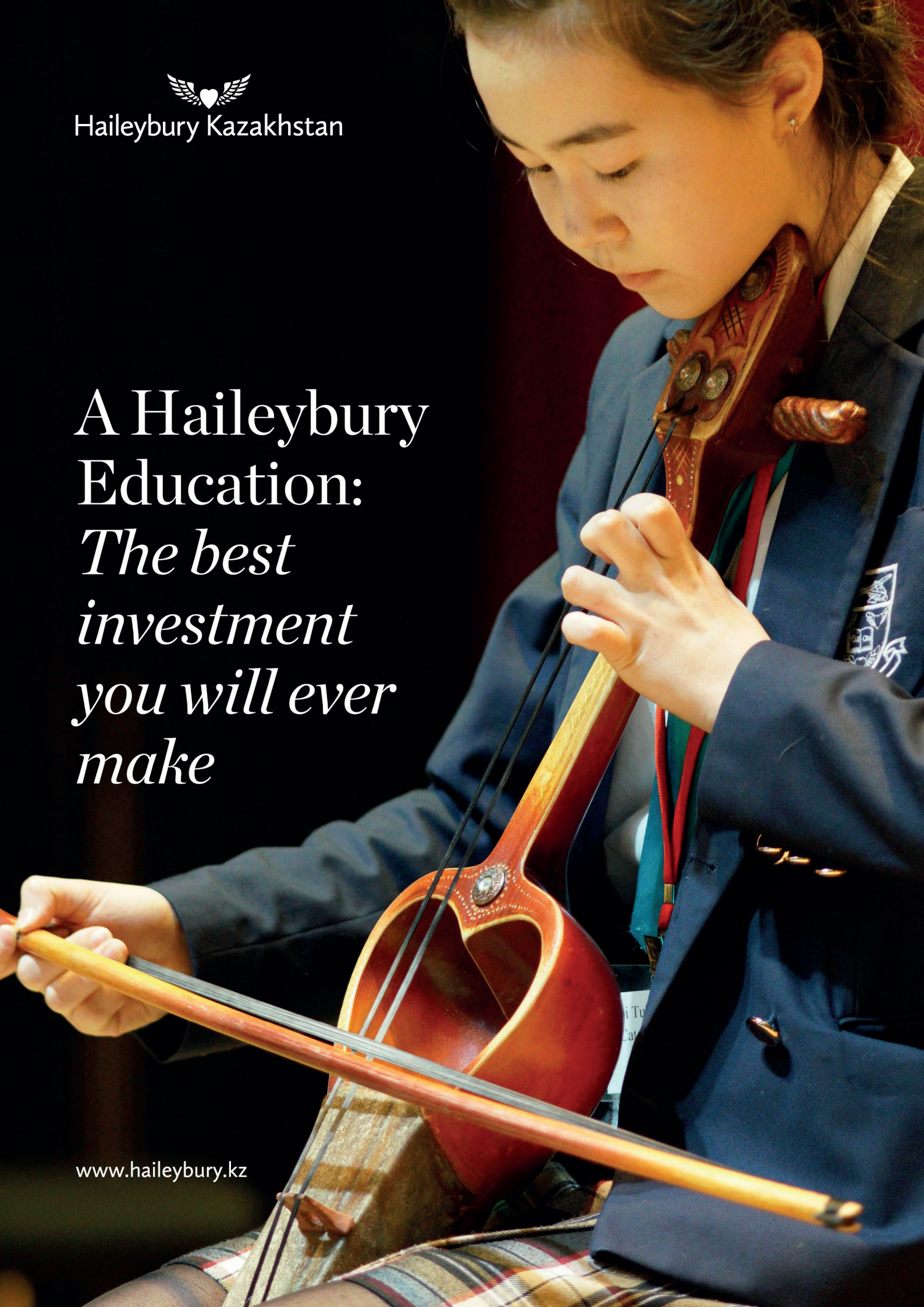
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EDITOR'S NOTE



Dear Readers,

The *Summer Issue of Investors' Voice* is devoted to an enquiry into the reforms outlined by Kazakhstan's President Kasym-Jomart Tokayaev as necessary for the country's *Economic Recovery* following the Covid-19 pandemic that was acknowledged with Kazakhstan's initial pandemic lockdown in March 2020. The economic damage and ensuing national crisis – damage that was not only economic, but also affected the country's socio-economic fabric – continued unabated throughout 2020 until the *President's Address to the Nation* on 1 September, when he outlined an agenda for recovery that would entail long-awaited reforms in many areas of Kazakhstan's life.

AmCham fully supports the President's objectives, which we have advocated over the past ten years at monthly meetings of the *AmCham–Prime Minister's Council to Improve the Investment Climate*. These are crucial reforms that would advance the transformation of Kazakhstan from an affluent, but still in many ways a post-Soviet state, to become a fully-fledged member of the international community in response to its aspirations. This will be a difficult road to travel and will take time, but with good leadership and political will, Kazakhstan can arrive at its chosen destination.

The twenty articles in the *Summer Investors' Voice* represent a realistic evaluation from different perspectives of what needs to be done to reach this destination. Our writers are leaders from a variety of organizations and industries located both in Kazakhstan and abroad who understand their topics very well. Their articles will stir discussion about the country's recovery while the Covid-19 challenges diminish, but continue to evolve.

The international organizations, diplomatic missions, and corporations whose senior representatives set the stage for further discussion of Kazakhstan's Recovery Agenda are:

- *the OECD, EBRD, World Bank, International Finance Corporation, Asian Development Bank, and the United Nations, all addressing a broad range of interrelated global and Kazakhstani economic and social challenges;*
- *the U.S. Embassy prioritizing the need to defeat corruption and the Netherlands Embassy providing an overview of renewable energy development across the European Union;*
- *prominent legal specialists stressing the need to strengthen rule of law and judicial reform;*
- *the Big Four commenting on the government's response to the pandemic slowdown, taxation as an incentive to investment, and future healthcare trends.*

AmCham hopes its members and readers will find the *Summer Investors' Voice* stimulating reading over the vacation period as we prepare for new challenges in the autumn while supporting Kazakhstan's recovery.

Doris Bradbury
Editor-in-Chief, *Investors' Voice*

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COVER ARTWORK:

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Aidyn Abjanbekov
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Andre Carstens
Erlan Dosymbekov
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Olessya Kirilovskaya
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For information about the AmCham, please email *info@amcham.kz*
For information about Investors' Voice and the Chamber's website,
please email Karina Galimova at *Karina.Galimova@amcham.kz*
To enquire about financial issues,
please contact Rimma Kazhemyakina at *Rimma.Kazhemyakina@amcham.kz*

CONTRIBUTORS

Diplomats - United States and the Netherlands



André Carstens, Ambassador of the Netherlands to Kazakhstan, Kyrgyzstan, and Tajikistan

André Carstens rose to senior positions in the Netherlands' Ministry of Foreign Affairs and the Ministry for Security and Justice with international posts in Russia, Georgia, and Afghanistan. He headed the Netherlands' contribution to the EU Monitoring Mission in Georgia and served as Director of Governance in Mazar-e Sharif, Afghanistan. Prior to his current position, he served as Advisor to the European Counterterrorism Coordinator in Brussels.

André Carstens received his Master's Degree in Social-Economic Law from the University of Utrecht and completed diplomatic training for the Ministry of Foreign Affairs, as well as completing the Senior Leadership Program of the Netherlands Public Service.



Eric Meyer, U.S. Consul General, U.S. Embassy in Kazakhstan

Eric Meyer, a career Foreign Service Officer with the U.S. Department of State, assumed the position of U.S. Consul General in Almaty in September 2018. Mr. Meyer's most recent overseas posting was as Consul-General in Cambodia where he served as Acting Deputy Chief of Mission. Prior to that, he was Consul at the U.S. Embassy in Helsinki where he also served on the board of the Fulbright Commission.

Eric Meyer graduated from the University of California Berkeley with a Degree in Political Science and holds an MBA from Georgetown University.

Asian Development Bank (ADB)



Nariman Mannapbekov, Head of Mission in Kazakhstan, Asian Development Bank (ADB)

Nariman Mannapbekov joined ADB in May 2006 as an Economist. He was promoted to Senior Economist in February 2010 and in September 2010 to Head, Project Administration Unit (Energy Division) at ADB Headquarters in Manila. In April 2016 he was appointed ADB's Head of Mission at the Azerbaijan Resident Mission in Baku.

Mr. Mannapbekov has more than thirty years of broad experience in investment banking, government, the World Bank, and now with ADB. He has led numerous ADB missions, including to Kazakhstan, and has deep knowledge of the country and region in general.



Kristian Rosbach, Economist, Regional Cooperation, Asian Development Bank (ADB)

Kristian Rosbach, ADB Economist for Regional Cooperation, joined the Asian Development Bank's (ADB) Central and West Asia Department in 2013. He leads development of a pilot economic corridor around Almaty and Bishkek, and has led and contributed to several ADB country partnership strategies and loan projects. Before ADB, he worked with the German Development Cooperation (GIZ) as an advisor to the Ministry of Finance of Kenya.

Kristian Rosbach graduated with a Master's Degree in Economics from the University of Freiburg in Germany.

Deloitte



Anthony Mahon, Partner and Leader, Caspian Energy and Resources, Deloitte Central Asia

Originally from Deloitte in the UK, Anthony Mahon spent three years working for Deloitte in the Middle East and joined Deloitte CIS in 2012. He leads Deloitte's Caspian Energy & Resources practice across all service lines. A Tax Partner who specialises in international tax, mergers and acquisitions and restructuring, he advises a range of Kazakhstan's most significant subsoil users.

Anthony Mahon holds a BSc from Aston University and is a member of the Institute of Chartered Accountants of England & Wales.



Olessya Kirilovskaya, Director, Tax and Legal, Deloitte Kazakhstan

Olessya Kirilovskaya has over 14 years of experience in legal consulting in Kazakhstan, including Kazakhstan oil and gas legislation, structuring of transactions, and environmental issues.

She holds a Bachelors degree in International law from Kazakh State Humanitarian and Law University and a Master's of European Business Law Degree from Leiden University (Netherlands).

CONTRIBUTORS

Dentons Law Firm



Aigoul Kenjebayeva, Managing Partner, Dentons Kazakhstan and Central Asia

Aigoul Kenjebayeva is Managing Partner for Kazakhstan and Central Asia at Dentons, appointed in August 1994. Her areas of specialization, acquired from over 30 years as a practicing lawyer in Kazakhstan and 11 years as a researcher in the economics of law, are corporate M&A, energy/natural resources, PPP/ infrastructure projects, IP, and competition law. Aigoul Kenjebayeva is widely considered a leader in dispute resolution in Kazakhstan. In 2020, she received the Kazakhstan Supreme Court award "For Contribution to International Cooperation".

Aigoul Kenjebayeva holds a Doctor of Law Degree from Kazakh State University (Kazakhstan), a Master's of Law Degree from Duke University (USA), and is a Candidate of Legal Sciences from Tashkent State University (Uzbekistan).

Ericsson



Aidyn Abjanbekov, General Director, Ericsson Central Asia/ Mongolia

Aidyn Abjanbekov is CEO of Ericsson in Central Asia and Mongolia. He is responsible for strengthening the company's technological leadership through development of mobile broadband, 5G, IoT, cloud, digitalization and cyber security technologies. He joined Ericsson in 2011, holding senior positions in Sweden and Russia. Prior to his current position, he served as Ericsson's Vice President for Government Relations in Russia and the CIS.

Before Ericsson, he worked in telecommunications and in Communications Ministries abroad with a focus on strategic management, infrastructure development, and operational efficiency. Aidyn Abjanbekov holds an M.A. in Business Administration from the University of Linkoping in Sweden.

Ernst & Young (EY)



Erlan Dosymbekov, Managing Partner, EY Kazakhstan

As EY Managing Partner in Kazakhstan and Central Asia, Erlan Dosymbekov supervises a variety of projects in the region, most of which are aimed at public sector reforms, including infrastructure development, cleantech, regional integration, and tax and customs administration.

Erlan Dosymbekov is also part of the EY Emerging Markets global network. He specializes in advising EY's corporate clients throughout the Caspian region on tax, transactions and international structuring, and is a member of the Caspian Mineral Resource Committee under the International Tax and Investment Center (ITIC). Erlan Dosymbekov holds BA degree in Finance from Eurasian National University (Kazakhstan).



Ksenia Babushkina, Partner, Healthcare Lead, Advisory , EY Central Asia

Ksenia Babushkina joined EY in March 2012 and currently serves as Risk Competency Leader for Central Asia, specializing in Risk Management, Internal Audit, Corporate Governance and Compliance Services. Prior to joining EY, she was based in Toronto as Risk Director in a global consultancy firm.

Ksenia Babushkina holds two BSc degrees in Economics and International Accounting and Finance from UWED in Uzbekistan and Hogeschool Jselland in the Netherlands respectively. She received an MBA in Accounting Information Systems from Bentley College in Boston and is a Certified Internal Auditor.

European Bank for Reconstruction and Development (EBRD)



Agris Preimanis, Country Director, EBRD Kazakhstan

Agris Preimanis was appointed Country Director for EBRD Kazakhstan in March 2017. From September 2017- January 2020, he also served as Chairman of the Kazakhstan Foreign Investors' Council Association (FIC). He previously held the position of EBRD Associate Director, Economist for Financial, VC and PE sectors, and Regional Lead Economist. Before the EBRD, he worked for 10 years at Oxera, a UK-based advisory firm, advising financial services firms and regulators in the UK, Europe and US.

Agris Preimanis holds a DPhil in Financial Economics from Oxford University, an MSc in Finance from Birkbeck College, a BSc in Economics, and a BA from the Stockholm School of Economics.

International Finance Corporation (IFC)



Adalyat Abdumanapova, Co-Head, Environmental, Social and Corporate Governance, IFC

Adalyat (Adel) Abdumanapova is a corporate governance and sustainable development expert with 19 years' experience in professional consulting. She joined IFC in 2006 and co-leads IFC Environmental, Social/Corporate Governance in Europe and Central Asia, advising private and quasi-state businesses and financial institutions on ESG practices. She specializes in corporate governance assessment, efficiency enhancement of board of directors, stakeholder engagement, SME governance and sustainability.

Adel Abdumanapova holds a Master's of Law degree from Essex University (UK), a Bachelor's degree from the International Business Academy (Kazakhstan), and a Bachelor's degree in Business Law from Kazakh State Law Academy.

Morgan Lewis Law Firm



Aset Shyngyssov, Managing Partner, Morgan Lewis Kazakhstan and Central Asia

Aset Shyngyssov is Managing Partner for the Kazakhstan practice of the Morgan Lewis international law firm. He concentrates his practice on energy and corporate overseeing mergers and acquisitions, finance, capital markets and infrastructure transactions in Kazakhstan and Central Asia. He is consistently top rated by Chambers, Legal 500 and IFLR 1000.

Aset Shyngyssov has been practicing with Morgan Lewis and its predecessor international law firm since 1996. He holds law degrees from both Kazakhstan and the U.S.

Organization for Economic Cooperation and Development (OECD)



William Tompson, Director, Eurasia Division, OECD

William Tompson is Head of the Eurasia Division in the OECD Global Relations Secretariat, having previously spent seven years as a Senior Economist in the OECD Economics Department and six years in its Public Governance and Territorial Development Directorates. He is the author of over 100 publications, including books, OECD studies, articles in scholarly journals and book chapters on political economy and economic policy.

Prior to joining the OECD, Professor Tompson taught at the University of London and the University of Oxford. He has also worked as a private consultant and as an advisor to the Select Committee on Foreign Affairs of the British House of Commons and has taught at the Institut d'Études Politiques de Paris. He holds BA and MA Degrees from Emory University in the United States and a Doctorate from Oxford University.



Olga Savran, Director, Anti-Corruption Network for Eastern Europe/ Central Asia, OECD

Olga Savran began her career at the OECD in 1996, and in recent years has been involved in public governance reforms in the OECD member states as well as in the transition economies. As Director of the OECD Anti-Corruption Network for Eastern Europe and Central Asia, Olga Savran leads the Istanbul Anti-Corruption Action Plan, is responsible for the Business Integrity Program and the network of law-enforcement officials on criminalization of corruption. She also contributes to the OECD Working Group on Bribery and other regional and global activities.

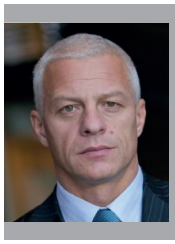
Olga Savran holds academic degrees from Kiev State University and Amsterdam University.



Sabine Zigelski, Senior Competition Expert, OECD

Sabine Zigelski has been Senior Competition Expert at the OECD Competition Division in Paris since 2013. She is responsible for the OECD's Competition Committee, which focuses on enforcement and international co-operation. Previously, she was in charge of the OECD-GVH Regional Centre for Competition in Budapest, which conducts training seminars for officials from East and South-East Europe.

Before joining the OECD, Sabine Zigelski worked for more than 20 years as a Senior Case Manager at the German competition authority, the Bundeskartellamt. She holds a Master's Degree in Economics.

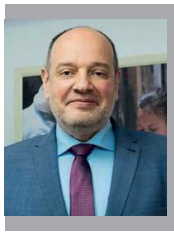


Drago Kos, Chair, Working Group on Bribery; Co-Chair, Business Integrity Network, OECD

Drago Kos is Chair of the OECD Working Group on Bribery in International Business and Co-Chair of MENA – the OECD Business Integrity Network. He serves on the International Anti-Corruption Advisory Board (IACAB) and is Co-Chair of the Defence Corruption Monitoring Committee (NAKO) in Ukraine.

Between 2011 and 2015 he served as International Commissioner and Chair of the Joint Independent Anti-Corruption Monitoring and Evaluation Committee (MEC) in Afghanistan. Between 2003 and 2011 he was Chair of the Council of Europe's Group of States against Corruption (GRECO).

U. N. Children's Emergency Fund (UNICEF)



Arthur van Diesen, Regional Representative, UNICEF

Arthur van Diesen is a development professional with over twenty years of experience in social policy, applied social research and monitoring and evaluation. He has worked and lived in Africa, South and Central Asia, and the Middle East. He has worked for the United Nations, for bilateral aid agencies and for international NGOs in both advisory and managerial functions. His main areas of expertise include: social policy, social protection, poverty analysis, gender equality and women's empowerment, civil society development, and monitoring and evaluation.

Arthur van Diesen is a sociologist by training with a Master's Degree from Tilburg University in the Netherlands.

KAZAKHSTAN EXITS THE PANDEMIC ECONOMIC CRISIS

by William Tompson
Head, Eurasia Division
Organization of Economic Cooperation and Development (OECD)

In 2020, the COVID-19 pandemic triggered a public health crisis and a recession without precedent in scale and scope in modern history. The closest parallel in recent times would likely be the influenza following the Great War, but this unfolded in a world that was far less interconnected, in terms of flows of goods and people, or of rules and institutions.

Fortunately, governments and societies were better prepared than a century ago to manage the health and economic impacts of COVID19. Despite many mistakes and disappointments over the past 18 months, we now see the world economy emerging from the crisis in better shape than we might once have imagined. But the recovery, like the crisis, is in some ways without precedent, and there are substantial downside risks.

The global context

The latest OECD forecast looks rather bit better than it did last autumn and far better than in the spring of 2020. The Organisation now expects global GDP to grow by almost 6%, following a 3.5% contraction in 2020, bringing most of the world back to – or above – pre-pandemic levels of GDP over the next year or so. Some will converge with the end-period GDP levels that they were expected to reach prior to the pandemic, effectively making up the lost ground.

However, the list of *potential headwinds* is long and familiar. *First,* vaccine roll-out, though accelerating, is uneven and far too slow in much of the world. Governments have administered almost 2 billion vaccine doses, while building up their capacity to test people and treat COVID patients. But far too few vaccines are reaching emerging and low-income countries, raising the risk of new outbreaks and new strains.

Secondly, there remain concerns about labour markets, bankruptcies and withdrawal of fiscal support. It is critical that we avoid the mistake of premature withdrawal of support, as occurred after the global financial crisis, but public finances in many countries are under strain and it would be tough to cushion a virus-driven weakening of growth.

Thirdly, we see bottlenecks emerging in some sectors, reflected in sharp increases in commodity prices and rising inflation in some quarters.

Overall, it seems clear that the recovery will be uneven across countries with possibly lasting structural changes in many. The countries and regions with effective test, track and isolate systems, where vaccination will be deployed rapidly, are likely to perform relatively well, even if overall weakness of global demand will hold them back. China, which started recovering earlier, is projected to grow strongly (it has already surpassed pre-pandemic output levels), accounting for over one-third of world economic growth this year.



Policy considerations

Governments will have to continue using their policy instruments actively, with better targeting to help those hardest hit by the pandemic. A striking feature of the recent past has been the absence of a clear correlation between the extent of fiscal support and the resulting economic performance, suggesting not all measures have been used wisely. Some governments have gotten far more bang for a stimulus buck than others.

We also need to ensure that this unprecedented monetary and fiscal support is used to underpin not only stronger but *better* growth. Here, governments are not yet doing enough, particularly when it comes to decarbonisation. Fossil-fuel subsidies are widespread and substantial in scale, and much recent fiscal support has tended to favour further investment in fossil fuels.

There are at least *three other priorities* for policymakers.

First, investing in essential goods and services such as education, health, physical and digital infrastructure. Around the world, the pandemic has revealed important weaknesses in all of these areas – but also tremendous upside potential.

Second, decisive actions to reverse durably the rise in poverty and income inequality. This is where vaccine roll-out can make a huge difference. Any resurgence of the pandemic is more likely than ever to hit poorer countries and poorer groups within countries, compounding the regressive impact already experienced.

Third, international cooperation: the world cannot solve a global crisis through single-country and inward-looking actions.

For emerging economies like Kazakhstan, there is a *fourth* challenge: investment policy. Preliminary data suggest that global FDI flows last year were down by around 38% on 2019. This was, of course, mainly a product of the pandemic, but it is critical to recognise that this drop represented the acceleration of a trend. Relative to world GDP, investment and trade FDI flows, FDI flows have been falling steadily since 2008-09, especially to developing countries, and last year they hit the lowest level since 1995. Globally, they are estimated to have accounted for less than 4% of total investment worldwide, as against 22% in 2007.

This represents a critical challenge for Kazakhstan as it seeks to diversify FDI inflows, attracting them to manufacturing and other non-resource tradable sectors. At issue is not just investment capital but access to know-how and technology, integration into value chains and access to markets – in short, the important positive productivity spillovers FDI can generate.

COVID-19 and Kazakhstan's reform agenda

The good news is that Kazakhstan's 2020 recession was comparatively mild by international standards: the GDP contraction was smaller than the global average and was relatively mild compared to those experienced by the country's peers, both in the region and among oil exporters worldwide. This was in part because the authorities responded early and strongly to the threat, in terms of public health and economic measures. While the country struggled to contain the virus, particularly after the spring, overall economic outcomes last year were better than might have been expected. However, structural factors also played a role – some of the sectors most affected by the pandemic were relatively under-developed in Kazakhstan. This, paradoxically, mitigated the downturn.

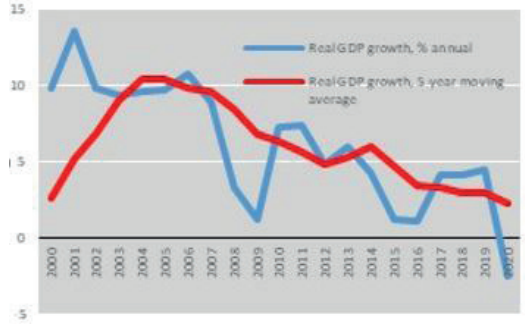
The bad news is that the recovery will also be less dramatic for the same reason: the very sectors that in many countries were hardest hit last year and are now driving the recovery are simply smaller and less developed in Kazakhstan. Moreover, there is a broader body of research suggesting that output losses suffered by commodity exporters as a result of external shocks tend to be persistent. They very often do not bounce back quickly to pre-shock trends. Growth in the years ahead, though solid, will be unspectacular – probably around 3.5-4.5%.

This is not good enough. A return to pre-pandemic growth rates will not be sufficient to deliver the future that Kazakhstan seeks. Measured at purchasing-power parity, real GDP per capita rose from under 27% of the OECD average to 59% in just a decade and a half (1999-2014). Since then, however, income convergence has stalled and the figure for 2020 was still just under about 59%. The country needs faster, broader-based growth to achieve a return to a growth trajectory that will allow such convergence to resume.

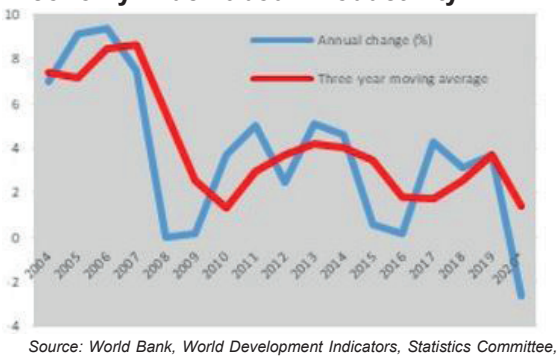
The crisis has yet again highlighted structural weaknesses that have been apparent for many years. Even before COVID-19, trend GDP and productivity growth had been decelerating for a decade (*Figure 1*). To a significant extent, this reflected Kazakhstan's over-reliance on primary exports, particularly hydrocarbons, though geopolitical shocks and weak growth elsewhere have also played a role. The waning of the oil boom has given new urgency to structural reforms that could contribute to greater diversification of economic activity and employment, and greater private sector dynamism.

GDP and Labour Productivity Growth (Figure 1)

A. Real GDP Growth



B. Economy-wide Labour Productivity



Source: World Bank, World Development Indicators, Statistics Committee, National Economy Ministry OECD calculations.

This could not only strengthen growth, it could also make it more inclusive: Kazakhstan's extractive sectors, being capital intensive, generate relatively little employment. Most employment is still in low-skill, low-productivity activities. The economy needs to generate more high-productivity jobs for Kazakhstan's growing population. Overall, then, the pandemic has underlined Kazakhstan's principal, long-term structural challenge, which is to diversify production, employment and exports.

Economic Diversification

Real diversification will require further, deeper reforms, particularly with respect to increasing competition and market openness, reducing the state's role in the economy, developing non-extractive sectors, strengthening the financial system, which remains a source of vulnerability, enhancing the efficiency and integrity of public administration and the judicial system, strengthening governance, and improving health and education. There is also much to be done to address spatial inequalities, particularly the urban-rural divide.

These priorities are well known and largely accepted by the authorities, whose reform plans largely point in the right direction. The challenge will be sustained effort and consistent implementation to improve the investment and business environment. The OECD's recent work on the legal environment for business suggests that implementation gaps, more than any formal policy settings, may represent the greatest reform challenge of all. Domestic and international investors consistently report that they face considerable uncertainty arising from *de jure* and *de facto* conditions for doing business.

Diversification cannot be directed from the top down: it must be nurtured from the bottom up, by creating an environment conducive to entrepreneurship, innovation and business growth. This is a tall order indeed, for the government and for the private sector. But it is not beyond Kazakhstan's reach.

As the Kazakhstan turns 30 this year, the global economy is as challenging as it ever has been. We are entering an age of opportunity and of contradictions – an era of hyper-connectivity but social fragmentation, of commodity booms and busts, of existential threats such as pandemics and climate change yet huge advances in healthcare, poverty reduction and technological innovation.

The path ahead will certainly not be easy, but neither was the path to the present. Kazakhstan has transformed itself in so many ways over the last three decades. There is no reason to think the transformation cannot continue over the next three decades.







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THE GOVERNMENT RESPONSE TO THE PANDEMIC ECONOMIC SLOWDOWN

by Erlan Dosymbekov
Managing Partner
EY Kazakhstan and Central Asia

The 2020 crisis gave a new impetus to reforms and highlighted the need for structural political and economic changes. The President, in his annual *Address to the Nation* in September, unveiled cross-sector initiatives to reform institutions and policies to confront "the new reality". In the same address, he also announced a national plan with actions for implementation in 2020 and 2021.

We see that the changes firstly concern the manner of identifying strategic goals, with one agency overseeing progress towards those goals. This is the *Agency for Strategic Planning and Reforms*. Endowed with a broad range of functions, the Agency and the recently created *Supreme Economic Council* have jointly initiated a set of economic reforms. These mostly focus on realizing the country's production potential and developing non-commodity exports.

The scale of the reforms coupled with the President's address to the Foreign Investors' Council on the upcoming end of the commodity super-cycle in June 2021 reveals the aspiration of the state to accelerate economic diversification. This will be done by shifting from a resource-based economy to a manufacturing economy, which is consistent with Kazakhstan's overall decarbonization strategy.



Economic slowdown. Government response

The pandemic and slump in oil price, which is now recovering again, have been a double hit to the Kazakh economy, leading to a contraction of economic activity for the first time in nearly two decades.

The Kazakhstan authorities have implemented strong policy measures to minimize the pandemic's impact. Access to emergency medical services has been improved, including to uninsured people. A substantive amount of direct support to firms through tax deferrals and subsidized loans has been introduced. Low-income households and affected individuals have also been provided with financial support. Furthermore, the government has worked hard to sustain critical smaller businesses without the capital to withstand the pandemic. A wide range of measures, from loans to tax holidays, and from repayment deferrals to employment support, have been taken.

Overall, a large part of the region's stimulus measures was aimed at keeping the SME segment afloat. Less than one month after declaring a nationwide emergency in mid-March of last year, the government deployed a cash-support program through on-line transfers to around 4.6 million recipients (24 percent of the population).

To understand how the pandemic affected SMEs and how successful the support measures were, EY conducted a survey which found that SMEs contributed 31.7% of Kazakhstan's GDP and employed 37% of the country's labor force (3.5 million). Yet, two-thirds of those SMEs operated in low-productivity sectors such as agriculture, wholesale and retail, and services.

The survey provided an opportunity to address the problem by enabling a better understanding of the needs of businesses, thus allowing a focus on taking the right financial support measures.

Looking ahead. Time for action

It is common knowledge that Kazakhstan is sensitive to changes in foreign direct investments. FDI for the last 10 years has exceeded annual GDP by a factor of two. Thus, continuing to improve the overall investment climate has become even more important in view of tightening competition for FDI, both globally and in the region. When doing so, existing investors should not be left out, as they create an image essential for attracting new investors.

For instance, implementation of a strategic investment agreement is now being considered. It implies a package of state support measures in the form of grants, guarantees, and capital reimbursement against taxes. While this is a positive trend, we would like to see such new investment opportunities cast in stone at the legislative level.

Numerous questions arise in this regard. On the one hand, the government is meeting investors halfway by offering improved investment opportunities (on the input side). On the other hand, it could do more on the output side to address inconsistencies in legislation and law application practices. These are known to have caused significant operational difficulties for foreign investors conducting business activities here.



Sometimes amendments to government policies and regulations whose effect may discourage investment in Kazakhstan are introduced. Certain elements of the tax system, for instance, remain an area of concern, particularly some of the recently enacted amendments or under consideration. The inconsistent manner in which the tax laws are occasionally applied has also hindered the country's performance as an attractive investment destination.

One example worth mentioning in this regard relates to the taxation of dividends paid to non-residents by Kazakh companies. From 2021, additional requirements to secure tax exemption for dividend distributions to foreign shareholders have been imposed. Clearly, any reduction in the availability of this exemption significantly impacts the attractiveness of a Kazakh legal entity as an in-country vehicle for doing business. To make things even worse, at the end of 2020, the tax authorities started to implement this new restriction retrospectively. This has caused serious concern in the business and investors' communities.

Another negative example in the area of international taxation would be the tax authorities' radical change in their approach to automatic exemptions under Double Tax Treaties. As a result, they have effectively made exemptions unavailable in certain instances. Both these cases have caused serious concern in the business and investors community. This is despite the President's September address, which stated explicitly that international tax rules required special consideration to stimulate new investment and to encourage the reinvestment of profits in Kazakhstan.

The above issues have recently been brought to the President's attention and he gave the government one month to have them reviewed and resolved. Needless to say, a successful outcome would demonstrate the country leadership's focus on addressing investors' most practical challenges.

One recent success story, in this regard, is the tax decriminalization initiative, which, once finalized, should significantly reduce the scope of taxpayers' criminal liability. This has been possible thanks to a tremendous joint effort by foreign investors, the government and the Prosecutor's office actively supported by the President and his office.

There are several other areas requiring reforms, and reforms are occurring in some of them. These include financial market reform, social reforms, large-scale digitalization and public-private partnership reform. The latter is perhaps one of the areas with the most inconsistencies from the institutional, regulatory and currency risk management aspects, for which EY has submitted relevant proposals to the government.



Conclusion

The pandemic-triggered crisis has prompted us to consider ambitious, transformational and stable reforms to adapt to the new reality and get the economy back on track. Along with new reforms, it is important to address current problems facing businesses and create incentives for investors.

In fact, Rule of Law, as well as stability, predictability, equity and transparency of the regulatory and fiscal regimes are some of the factors that have the most immediate and significant impact upon investors. Timely resolution of issues arising in this regard coupled with efficient implementation of ongoing and future reforms will be a key factor in improving the country's investment environment and attracting more investment.

POST-PANDEMIC GLOBAL HEALTH TRENDS

by Ksenia Babushkina
Partner, Head of Advisory Practice
EY Central Asia and the Caucasus



The COVID-19 crisis has caused massive disruption and dislocation for the global economy. Governments globally have placed approximately 4 billion people, 50% of the world's population, under lockdown to stop healthcare systems from being overwhelmed. That was an unprecedented situation that led to untold effects on physical and mental health. Other issues adding to the crisis, for instance, an increase in healthcare benefit costs placed added pressure on the finances of many employers.

COVID-19 has changed the entire landscape within which health and human services are delivered, placing immense pressure on systems and staff. Before the pandemic, many health and social services providers were slow to embrace digital solutions due to lack of funds, regulatory restrictions, and risk aversion. COVID-19 swept away many of these barriers, leading to the rapid adoption of digital solutions and transforming work processes and service delivery.

This recent surge in digital transformation has brought many benefits for health and human services users and practitioners alike, such as a better experience for patients and service users, improved access to care, and increased staff productivity. To capture ongoing benefits, organizations need to continue investing in digital services and to take steps to embed new technologies and practices for the long term.

During the crisis, technology has been stepping up and helping us address the challenges. Hospitals have been using automated technologies to help with infection control. Artificial Intellect (AI) has played a significant role, particularly in diagnostic and contact tracing during the Covid-19 pandemic. Alibaba's researchers have developed an algorithm to analyze CT scans and differentiate between various degrees of coronavirus infections within 20 seconds with a 96% accuracy rate. This algorithm is used in 26 hospitals across 16 provinces and municipalities in China.

Telemedicine and online consultations have taken a massive leap forward, especially for primary care and surge control to divert unnecessary emergency facilities. The technology for telemedicine has existed for years, yet has never before taken off at full scale.

Technology has also helped with contact tracing to monitor how the virus is spreading and keeptabs on it. Technology companies and start-ups have offered to help health care organizations with a free kit and are interested in getting into the healthcare space.
Will they be key players in the future? Let's glance into what may await healthcare. There are four major external forces at play across the globe that are driving the shift in healthcare delivery.

- The first refers to *socio-economic forces*. According to the *World Economic Forum* with the *Harvard School of Public Health* report, chronic non-communicable diseases will cost the world US$30 trillion by 2030. The global population aged 60 or older will have reached 1 billion by 2020, and even 2 billion by 2050.
- Next is *technology* forces. Following EY and *Imperial College London*'s joint survey in 2020, more than 60% of 2313 physicians from 6 countries (*Australia, India, Italy, UAE, UK*, and the *US*) believed that digital technologies would enable care teams to coordinate complex care remotely over the next decade.
- The third is the required *capital efficiency*. According to a *Johnson & Johnson Survey*, improving operational efficiency was a high priority for 95% of US health executives in 2019.
- Finally, there is also *customer-centricity*. An EY survey of 47% of consumers reveals that they are open to emerging technologies such as chatbots or intelligent health assistants.

Apart from the significant forces mentioned above, there is also something equally important to talk about. The future of health care lies in bold changes to business models, policies, the adoption of digital technologies, and funding strategies that enable consumers to play an active part in their health.

Transition to long-term home community care includes healthcare services that are moving away from expensive, acute hospital care settings to outpatient care, demand for home care and long-term care (on the rise), and care provision that extends from hospital-based primary care to community-based wellness.

When it comes to adopting digital technologies, providers face many challenges and look for digital solutions to address them. Telehealth and telemedicine enable a paradigm shift in physician-patient interaction, whereas remote care continues to grow for traditional health care providers.

Consumerism driven by improved patient awareness can be considered from different angles. Patient-centric healing has transformed how providers view health care provision. A calming environment is a top priority in hospitals and treatment centres, given that reduced stress has been shown to shorten patient stays.

Move towards sustainable care provision can be done through health hospitals that provide enough high-quality services. Health precincts are hubs of health care, research and innovation, education, and industry, emphasizing population health. Smart hospitals enhance patient well-being, aid the curative process, and utilize natural resources efficiently in an environment-friendly setting.

Regulatory changes, shift to value-based care, and convergence are pressuring payers to change their business models, but how? This means consideration of slow enrolment and declining growth rates; vertical integration and cross-border expansion; and a strong focus on preventive health. It also essential to know that consumers are central and a priority for payers.

In Summation

To sum up, all the above, here are key points to mention. The COVID-19 pandemic and the global disruption it caused has demonstrated that organizations have the opportunity to become more resilient, agile, and innovative if they shift to digitally-enabled business models with data at the core.

Organizations have been given the incentive to act now to effectively unlock the power of health data to fight future infectious outbreaks and slower-burning diseases such as diabetes, heart disease, and cancer.

The crisis shows the importance for health care players to act now to be ready for the future. The emergence from the crisis shouldn't be thought of as a 'great restart,' but rather a 'great reset.' The industry now has the opportunity to use that reset as a starting point for reimagining health care as a data-driven, personalized ecosystem fit for the future.

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COMBATING CORRUPTION: A PRIMARY NECESSITY

by Eric Meyer
U.S. Consul General
U.S. Consulate in Almaty

The U.S. government remains committed to strengthening the environment for economic development in Almaty, Kazakhstan, and Central Asia. This is a key mission goal. The U.S. Consulate in Almaty is the only U.S. consulate in Central Asia and reflects the importance we place on Almaty as an economic and financial hub for the region. In addition to the Consulate's economic office, the Consulate is home to both the *United States Agency for International Development's (USAID)* regional office and the only Department of Commerce office in the region. All these agencies and offices work together to support Kazakhstan's sovereignty and promote economic growth as well as to support U.S. companies.



The COVID-19 pandemic has caused a global economic crisis. However, the pandemic has also created opportunities. While we may think of positive opportunities, such as new technologies allowing us to work from home, COVID-19 has also brought opportunities for the less scrupulous. Examples abound of corrupt actors taking advantage of the pandemic for personal gain at the expense of society's safety. This is a global problem, and the U.S. government remains concerned about reports of corruption in the receipt and distribution of COVID-19 assistance.

Every crisis is an opportunity, and now is an opportunity for governments and businesses to push ahead with anti-corruption measures. According to Kazakhstan's *Anti-Corruption Agency (ACA)*, in 2020 722 people were convicted of corruption-related offenses, and 50.7 billion tenge of stolen assets were recovered, which is twice as much as in 2019. These are impressive numbers, and they have been noticed.

In the latest *Transparency International "Corruption Perceptions Index"*, which was released in January 2021, Kazakhstan's score improved, and the country is now ranked 94th in the world, up from 113 in 2019.

However, despite recent improvements, much work remains. For example, according to *Transparency International's 2020 "Global Corruption Barometer*," 17 percent of public service users in Kazakhstan paid a bribe in the previous 12 months. *Transparency Kazakhstan* recently noted that corruption is still common, including paying bribes for common government services. According to their research, almost 13 percent of people faced corruption when trying to obtain medical services and 10 percent of people faced corruption when getting a job.

Corruption undermines the rule of law and weakens public trust in government institutions. Investors need confidence and transparency at all levels of government decision-making, including rulemaking, enforcement, and procurement procedures. A lack of transparency is closely linked to corruption. Competition for direct foreign investment is fierce, and corruption factors heavily in corporate decision-making on where to invest. Companies have a choice on where to make their investments; as countries seek to attract investors, they must remember corruption is a repellent.

Corruption remains an impediment to developing responsible government and an attractive business environment. The United States believes that shining a light on corruption helps all of us improve the situation. Each year the State Department publishes an annual *Investment Climate Statement*, and the *Commerce Department* publishes a *Country Commercial Guide* to aid businesses considering doing business overseas, and to deliver messages to foreign governments on improvement and reform.



The U.S. government is the largest donor to the world's leading anti-corruption review mechanisms. With the help of our international partners, the U.S. government has returned $1 billion dollars globally in

stolen assets in the last two years. The United States also has a variety of tools at its disposal, including visa restrictions and financial sanctions, to target those involved in corruption.

Financial sanctions, such as the *Global Magnitsky* program, allow the U.S. government to block the assets of and, in some cases, deny visas to, corrupt actors. Over 200 individuals have been sanctioned under the *Global Magnitsky* sanctions program since its inception in 2017. This includes former Deputy of the Kyrgyz Customs Service Raimbek Matraimov, who was sanctioned by the U.S. *Treasury Department* in December 2020 for being involved in a customs scheme where at least $700 million was laundered from the Kyrgyz Republic.

The United States cannot fight the battle against corruption alone, and we work with our partners to increase countries' anti-corruption capacity. The U.S. Mission to Kazakhstan, through USAID, partners with the Government of Kazakhstan and civil society to promote rule of law, transparency, and accountability. For instance, USAID has worked with the Supreme Court of Kazakhstan to strengthen judges' ability to apply international best practices.

USAID has also supported recommendations on *Civil and Administrative Procedure Codes* that strengthen the protections for citizens in disputes with state bodies. These efforts promote the modernization of the judicial system, help increase public trust in the judiciary, and enhance Kazakhstan's commitment to transparent and fair democratic governance. USAID also assists civil society to strengthen its role with monitoring and oversight, functions that for increase public engagement in budget processes and greater transparency.

Furthermore, the Mission's *International Narcotics and Law Enforcement Affairs* section (*INL*), located in the U.S. Embassy in Nur-Sultan, is assisting the criminal justice system combat abuse. *INL* plans to partner with the *ACA* in a hackathon to develop an app aimed at the youth of the country to raise awareness of corruption and encourage its reporting.

In addition, *INL* is working with the Ministry of Internal Affairs in their efforts to reform law enforcement in Kazakhstan. On its own initiative, the Ministry of Internal Affairs has taken steps to reduce corruption in its ranks. Salaries have been increased and certain payment functions have been put on-line to remove the temptation that comes from interacting with the public on money issues.

The battle against corruption is not only the government's fight. The American Chamber of Commerce in Kazakhstan (AmCham) and its members also play an important role. AmCham voices strengthen the message that corruption is an important issue and a factor that businesses consider when they think about investing in Kazakhstan.

Furthermore, the U.S. government, through its Consulate in Almaty and Embassy in Nur-Sultan, are here to help promote American businesses and a positive investment climate. We remain committed to working with AmCham's members on issues such as corruption and other hurdles that hinder doing business in Kazakhstan.



FIGHTING CORRUPTION IN KAZAKHSTAN: THE VIEW FROM THE OECD ANTI-CORRUPTION NETWORK

by Olga Savran
Director, Anti-Corruption Network (ACN)
Organization for Economic Cooperation and Development (OECD)

Kazakhstan has been an active member of the *OECD Anti-Corruption Network for Eastern Europe and Central Asia (OECD/ACN)* and its monitoring program, the *Istanbul Anti-Corruption Action Plan* since 2004. Since then, Kazakhstan has been reviewed and monitored 4 times, the last time in 2017. Regular monitoring gives the *OECD/ACN* a good understanding of anti-corruption reforms in Kazakhstan, their achievements and shortcomings. The article below recaps main areas of progress with focus on the 4 main challenges and insight into how the *OECD/ACN* intends to strengthen its monitoring program this year.

Kazakhstan has adopted its anti-corruption strategy, and the country's presidents and prime minister stress the importance of fighting corruption in their speeches. *Kazakhstan's Anti-Corruption Agency*, although not stable, has created initiatives to fight corruption - for example, responsibility for corruption by public officials to the heads of their relative institutions and creation of an island of integrity in the UK-modeled court that handles foreign investor cases. There have recently been several high-level corruption cases entailing the arrest of important officials. These actions signify an awareness of corruption risks and demonstration of enforcement actions.

The above efforts led to some improvement in the country's perceived level of corruption according to *Transparency International (TI)*. In the last 10 years, Kazakhstan has risen 10 points in the *TI CIP,* reaching 38 out of a possible 100 scores. In 2020, Kazakhstan occupied 94th place among 180 countries measured by this index. Several of the OECD/ACN countries were ranked as follows: *Estonia - 17, Georgia - 45, Romania – 69, Ukraine - 117, Russia -129.*

Kazakhstan's leadership has an ambition to raise their country to higher standards, including to OECD membership in the future. Kazakhstan has recently joined the *Council of Europe's Group of States Against Corruption*. These international efforts are positive signals of the willingness of the county's leadership to modernise and reform. However, to achieve this objective, Kazakhstan needs to substantially improve its fight against corruption.

What are the main systemic obstacles? They are as follows:

1. **Politisation of the public administration and decision-making**: Kazakhstan has a strong centralised decision-making system, where decisions are often made by ministers or heads of state services without a proper evidentiary basis or consultation with civil society. Newly-appointed leaders often announce new initiatives without proper preparation that should be done by professional civil servants.

   The *OECD/ACN* receives questions from their Kazakhstani partners seeking quick answers for their leaders (often 2-day deadlines), for instance, how anti-corruption bodies work in Germany, France and Korea, or an explanation of corporate liability for corruption in Russia and Latvia. This short turnaround does not allow adequate time nor provide a sound basis for a useful decision.

2. **Incomplete reforms of anti-corruption legislation**: Partly due to politicised decision-making, Kazakhstan remains non-compliant with international anti-corruption standards because the political leaders are not aware of these standards. For example, Kazakhstan still does not have a system of disclosure of assets and interests for public officials, which has proven a powerful tool for corruption prevention and is part of *UNCAC* and *OECD/ACN* requirements. In fact, Kazakhstan is the only country along with Azerbaijan that does not have such a system among the countries in the *OECD/ACN Istanbul Anti-Corruption Action Plan.* This is a tool that can be used by government bodies to prevent corruption among their employees.

   Kazakhstan is also non-compliant with the *UNCAC* requirement to introduce liability of companies for corruption. The draft was developed in the past, but then was abandoned. Corporate liability for corruption is a mandatory requirement for candidates seeking to join the *OECD Foreign Bribery Convention*, a mandatory step towards OECD membership. Lack of corporate liability also reduces Kazakhstan's ability to provide and request mutual legal assistance in corruption cases from other countries.

3. **Instability and insufficient professionalisation of anti-corruption institutions**: Kazakhstan's *Anti-Corruption Agency* was established a long time ago, and has been reformed and transformed many times since then. Over the last few years

it has been merged and then separated again 3 times. There is no transparency or merit for the hiring and firing of its leaders. This agency serves the function of the anti-corruption police; other important prevention functions are not developed.

4. **Lack of meaningful partnership with citizens**: Finally, it is important to recognise that anti-corruption reforms only work if there is public support and engagement. Kazakhstan, like many countries in the region, has a long-lasting tradition of secrecy and provides public information slowly.

For example, Kazakhstan had conducted anti-corruption surveys in the past and *OECD/ACN* recommended important efforts to create an evidentiary basis for reforms, but the results were not published. Yet Kazakhstan working relations are often discussed with active civil society groups, including during *OECD/ACN* monitoring.

The *OECD/ACN* is currently developing methodology for the 5th round of monitoring. This new round will bring many innovations, which will hopefully strengthen the monitoring process and help Kazakhstan improve its anti-corruption work. The main new element is the use of anti-corruption performance indicators for the assessment of countries. These indicators will cover 13 areas, as demonstrated below, and for each area, specific indicators and benchmarks will establish specific actions for countries to obtain high scores.

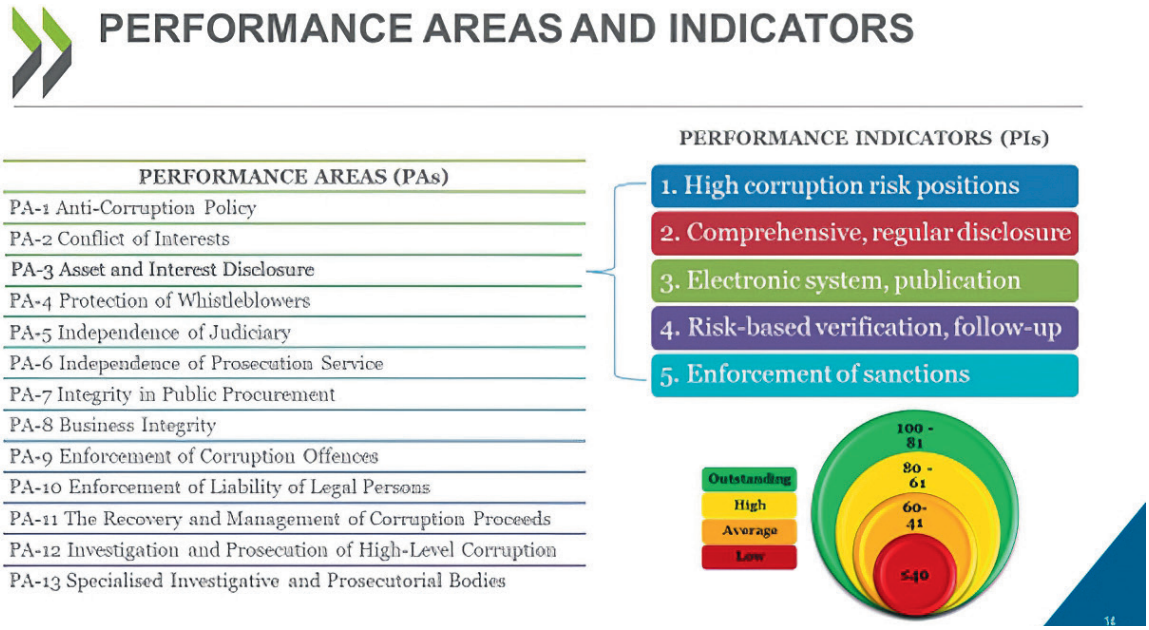
Another innovation is that increased weight will be given to 'enforcement' benchmarks, such as statistics enforcement and implementation actions. Separate benchmarks will assess public perception of these actions.

Finally, this updated form of monitoring will be conducted annually, thus entailing more permanent pressure on the countries and allowing them to be praised for progress immediately.

In addition to country monitoring, the *OECD/ACN* is running several other projects, one of which is specifically useful for the readers of this publication. It is the *OECD/ACN Business Integrity Group (BIG)* that brings together BIG practitioners from state bodies and from the private sector. Within this Group's framework, we have currently launched the second edition of the BI survey.

Business Integrity Survey Responses Welcome

In the past, it has been difficult to solicit sufficient responses from Central Asian countries. The OECD/ACN would therefore be grateful if readers could provide input via: *https://survey2018.oecd.org/Survey.aspx?s=580dda80547e4a7fb070ad9aa0127391.*



CONSEQUENCES OF CORRUPTION

by Drago Kos
Chairman, Anti-Bribery Working Group
Organization for Economic Cooperation and Development (OECD)

When people say that corruption is bad, they normally think of the moral dimension of corruption rather than the other more tangible consequences. While it goes without saying that corruption is morally unacceptable, this is far from being precise enough when it comes to the full spectrum of the consequences of corruption. The following article will consider the economic consequences of corruption within the full spectrum.

Many studies have examined the economic and social consequences of corruption. Although social consequences also have an impact on the economic situation in any given country, the economic factors alone influence it in a much more direct way. Therefore, the following compilation of data from different studies, both old and new, show the direct and indirect consequences of corruption based on scenarios of measurable increases, before and after, at the level of national-scale corruption.

Direct economic consequences of corruption can be summarised as follows: if the country experiences an increase of 1 index point in corruption, the consequences in important areas will be the following:

- ***2,5 (2,9/4,5) percentage point decrease in investment***
- ***7,5 percentage points increase in the tax rate***
- ***1,3–3 percentage point decline in public expenditure***
- ***0,13 percentage points drop in GDP growth***
- ***$425 fall in GDP per capita***

The indirect economic consequences of corruption in a country are the following:

- ***increase in income inequality***
- ***decrease in aid per capita inflows***
- ***misallocation in resources and talents***
- ***change in the structure of public expenditures***
- ***lower productivity and innovative thinking***
- ***increase in the shadow economy***
- ***reduced school enrolment: 1 index point increase of corruption = 5 percentage points decrease in school enrolment***
- ***reduced life expectancy (1 index point increase of corruption = 2,5 years decrease in life expectancy***

If the economic consequences of corruption can be so devastating, the obvious question arises as to how to successfully fight that scourge. Academicians and practitioners agree that the following elements are essential for effective prevention and suppression of corruption:

- ***genuine political will (walking the walk, not talking the talk)***
- ***compliance with internationally recognised anti-corruption standards***
- ***strict adherence to the rule of law***
- ***autonomy and impartiality of law enforcement and judiciary***
- ***proper balance between prevention and suppression of corruption***
- ***good governance and punlic sector transparency***
- ***high level of corporate integrity***
- ***citizens' awareness of and commitment to personal integrity in their daily lives***

In principle, the story of an effective fight against corruption is a simple one. Every country needs an honest government serving as a role-model with real desire, sufficient legal grounds, and effective practical efforts to confront corruption. The government must be capable of incentivising, organising, leading and/or guiding joint anti-corruption efforts of public and private sector organizations and from individual citizens, fully respecting their specific mandate, power, knowledge, and resources, and potential special roles in national anti-corruption efforts.

Without such a government, not much can otherwise be done. And even the best anti-corruption government in the world cannot tangibly decrease the country's level of corruption without the commitment and engagement of the private sector, civil society, and individual citizens.

Some countries aim to improve their economic situation by using the knowledge, expertise and best practices of different international organisations. A typical example of such an organisation is the OECD with 37 member countries, also called "the club of the rich". Without doubt, participation in the OECD can significantly assist countries in coping with their economic problems. But there are hurdles to joining the club: in order to be admitted, countries must receive approval of the OECD's working bodies.

One of those is the *Working Group on Bribery*, considered to be the highest hurdle. Candidate countries have to fulfil strict conditions to join the Working Group first, then later significantly step up their anti-corruption efforts to receive the green light from the Group. On many occasions, countries

do not take the process seriously enough and in consequence they extend candidate status for at least a year to strictly fulfill the Working Group's standards.

The situation presents a clear paradox. Countries have to show results in the economic and anti-corruption areas to be admitted, *first*, to the Working Group and *second*, to the OECD, after which admission finally might give a big boost to their economic development and anti-corruption efforts. Not all OECD countries are using this potential, which demonstrates that passive OECD membership does not by itself bring improvement in the key domain of anti-corruption.

The lesson learnt by many countries is really a simple one: with or without engaging in different international organisations, a country will neither achieve economic prosperity nor successfully advance in other important areas and systems without seriously fighting corruption. A country's participation in international organisations may be of great support to its national anti-corruption efforts and can even be a multiplier of results. However, without serious national efforts, even participation in the most exclusive international alliances will not change much in a country's national anti-corruption arena.

Conclusion

It is almost a rule that developed countries suffer less from corruption than their developing partners, but even the most developed countries still have many areas for improvement, perhaps even dramatic improvement in suppression of corruption. The evidence is clear: a successful fight against corruption can be a decisive element in a country's economic prosperity, while a high level of a general human development in the same country only slightly affects the effectiveness of its anti-corruption efforts.

In other words, effective anti-corruption prevention and suppression efforts are *conditio sine qua non* for faster, and perhaps more broadly-based economic development in countries committed to the fight.

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FAIR COMPETITION: CREATING A LEVEL PLAYING FIELD

by Sabine Zigelski
Senior Competition Expert
Organization for Economic Cooperation and Development (OECD)

The OECD's competition team has been active in Kazakhstan for considerable time and has kept a close eye on developments in Kazakhstan's competition regime and institutions ever since the *Peer Review of Kazakhstan's Competition Law and Policy* in 2016. The *Review* issued many recommendations to Kazakhstan's competition authority, but also to the government, and many of these are still pending implementation.

Why is competition a topic that deserves (more) attention in Kazakhstan? Isn't it a luxury problem that should only be addressed once more pressing problems like economic disturbances caused by the pandemic, the need for structural changes in the economy, deep-rooted inequality, corruption or digitalization are resolved? The answer is that none of these problems can be solved effectively without competition.

It is only through competition that economic actors will be forced to adapt efficiently and to keep costs and prices down. Competition offers the incentives to innovate and change, to create employment and growth for market players willing to take risks to win – or fail, rooting out the least efficient solutions.



An essential pre-condition for all this to materialize is trust in markets and fairness of the competition, thus creating a level playing field for all market actors. The role of the state is to be neutral when it comes to economic activity on markets, and is a particular challenge when the economy is dominated by state-owned enterprises (SOE).

Private enterprises willing to invest and to take risks – from Kazakhstan or abroad – can challenge inefficient structures and boost economic activity and innovation. However, they will only do so when they can trust in level playing field conditions and are not faced with protectionism, corruption, state protection of individual interests, and prevailing oligarchic structures.

In short, the state has two important tasks when it comes to competition – to stay out of markets and not influence them unduly, unless there is a clear case of market failure – while creating the framework conditions that allow for the proper functioning of markets.

Competitive neutrality of state action

If the state stays out of markets and does not interfere without good cause, this is called "*competitive neutrality*". Competitive neutrality can be exercised in various complementary ways:

- *The state should not give undue advantages benefitting some businesses over others, and this applies to SOE as well as private businesses. Such advantages might include loans, loan guarantees and state investment in capital at conditions not in line with market principles, as well as favourable tax treatment, grants, and goods or services provided by governments at favourable prices. Granting licenses at favourable conditions would also fit this category.*

- *When a public service obligation is placed upon an enterprise, the compensation should be appropriate and proportionate to the value of the services. It should not enable that company to cross-subsidise other market activities.*

- *When the state regulates or intervenes in markets, the same rules should apply for all market participants, public or private, small or large, domestic or foreign. Responsibility for market regulation should never be given to an enterprise that is an actual or potential competitor on that same market.*

- *Any new or revised regulations should undergo rigorous competition assessment to ensure they don't restrict competition unnecessarily – and the OECD has developed a toolkit do such assessments.*

- *Lastly, government procurement, which on average amounts to 12% of GDP in OECD economies, should be fair, non-discriminatory, transparent and open to all businesses, regardless of ownership, nationality or legal form.*

These principles have recently been enshrined in an *OECD Recommendation on Competitive Neutrality*. All 38 OECD member countries approve of these principles and adhere to them.

Equal application of the competition law

The *Recommendation* also advises creation of framework conditions that allow for the proper functioning of undistorted markets, including

- *A competitively neutral competition law that will address anti-competitive conduct, including merger control, and*
- *Ensuring competitive neutrality in the enforcement of the Competition and Bankruptcy Laws.*



The same competition rules should apply to all market actors, to ensure there is a level playing field. This means that enforcement does not discriminate between different forms of ownership, size or nationality, and that it will not be subject to political influence.

For the main enforcement areas, this should be reflected in the following policies:

- *For **cartels**, zero tolerance should be the rule. Enforcement should not be more lenient with regard to certain types of cartelists or certain markets. Neither should it tolerate export cartels. It should not provide exemptions for those that lobby the loudest, have the best connections or the deepest pockets. It should not tolerate cartels mandated by state bodies in ignorance of the competition rules.*
- *In **merger control**, enforcement should aim at preventing accumulation of market power through acquisitions and should be applied with the same rigour to all. No softness, for example in terms of soft behavioural remedies for some, while asking for structural commitments or prohibiting mergers for others. No exemptions for SOEs. No exemptions for "national champions".*
- *The enforcement against **abuses of dominant positions** will be the real test-case for competitive neutrality. Dominance is frequently held by SOEs or by privatized former state monopolies. These often determine how much competition and entry will be possible for newcomers and foreign businesses, and these are the markets that need to be opened by determined enforcement – or by adequate ex-ante regulation.*

One major prerequisite to achieve such a neutral *Competition Law* enforcement is a truly independent and well-resourced competition authority. While progress was made with regard to the institutional status of the competition authority, it remains to be seen if the structural separation from the ministry has changed the amount of political influence that can still be exercised. A lot hinges on appointment and dismissal rules of the agency management, and how easily they can be granted or taken away.

Without independence and sufficient resources, insufficient and discriminatory enforcement will be the consequence, which ultimately does tremendous harm to Kazakhstan's development, markets and consumers. The OECD offers guidance and instruments on any of these topics, and has long experience in tailoring its advice to the circumstances and conditions of the jurisdiction in question, while pushing boundaries and setting ambitious goals. It is the only way to grow.



UPDATE: KAZAKHSTAN'S ANTI-MONOPOLY LAW

by Aset Shyngyssov, Managing Partner
Marat Mukhamediyev, Senior Associate
Morgan Lewis LLP

Morgan Lewis

The New Anti-Monopoly Agency

In his *State of the Nation Address* of 1 September 2020, President Tokayev pronounced fair competition as one of the pillars for sustainable development of the Kazakhstan economy and stressed a focus on the prevention of abuse by monopolies. He singled out electricity, petrochemicals, communications, pharma, coal markets, etc. as the industry sectors lacking fair competition.

President Tokayev emphasized the need for establishing a powerful and independent state authority to protect and develop competition. Thus, the President ordered establishment of a new, independent regulator reporting directly to the President—the *Agency for Protection and Development of Competition* (*the Agency*)—in line with OECD recommendations.

As a result, the Agency was established on 8 October 2020 with a broad mandate—protection of competition, restriction of monopolistic activity, and control over state monopolies and commodity exchanges. *The Agency* is chaired by Serik Zhumangarin, a former Board Member of the *Eurasian Economic Commission* and ex-chair of the *Kazakhstan Anti-Monopoly Committee*.



National Competition Roadmap

In order to ensure sustainable economic growth, improve the efficiency of the country's economy, and create a competitive environment in Kazakhstan's commodity markets, on 31 December 2020 the President issued Decree No. 484 on *Key Directions of State Competition Policy* (the Decree). Key directions in the Decree are, among others:

- *the government's top priority should be to assist in development of competition and implementation of the new proactive competition policy;*
- *before 1 April 2021, the Agency must develop and present to the government a "National Project for Development of Competition in Kazakhstan for 2021-2025";*
- *decrease state participation in and improve the efficiency of management of the state's economic assets;*
- *increase the SME share in the economy; and*
- *take a holistic approach by way of (i) enacting new laws to consider the effect on competition per OECD standards and (ii) engaging the Supreme Court to streamline the court practice (e.g. by passing a normative resolution of the Supreme Court to address the application by lower courts of anti-monopoly laws).*

Main Principles of the New Competition Policy

The Decree highlights the main principles of the state competition policy as the following:

- *equality of all business entities, regardless of their forms of ownership;*
- *priority of active ("smart/nimble") preventive compliance (as opposed to traditional penal/protective) enforcement measures;*
- *accessibility and transparency of antimonopoly regulation/control — regular public reporting by the Agency and Open Space initiative;*
- *measurability of the results of state policy on competition development; and*
- *responsibility of central state and local executive bodies for implementation of a state policy on competition development.*

Anti-Trust Enforcement Tools

The instruments below are within the *Agency's* authority to tackle anti-competitive actions (inactions) of market participants and state authorities:

- *warning (admonition);*
- *notice of breach (allowing a voluntary cure within the set deadline);*
- *investigation;*
- *merger clearance;*

- *administrative penalties—income disgorgement (3%-5% of monopolistic yearly income);*
- *criminal prosecution; and*
- *judicial invalidation of faulty transactions*.

Advance Ruling

This is a fairly recent new element in the law that is designed to bring about legal clarity for market participants considering entering into an agreement bearing the signs of an anti-competitive agreement. Essentially, the advance ruling contemplates the possibility of applying to the *Agency* to pre-approve a draft of such agreement from an anti-competitive perspective with the view of securing exemption from liability.

However, the relevant practice is undeveloped and lacks consistency. There have been cases in the past when the Agency's predecessor erroneously expanded the subject matter of its review and focused on the form rather than the substance of the relevant agreement.



Merger Clearance in M&A Transactions

For equity and asset transactions with direct or indirect involvement of Kazakhstan assets, the fair question would be whether a contemplated transaction is subject to merger clearance in Kazakhstan. Below we briefly mention the key basic elements of Kazakhstan merger-control requirements, positive developments that have been made, and what can be improved further.

- *An acquisition of more than 50% of the voting shares in a company is deemed an economic concentration that requires the Agency's pre-transactional consent;*
- *The consent for economic concentration (CEC) requirement has an extraterritorial effect—it may apply to acquisitions by foreign companies if there is a nexus to Kazakhstan (e.g. assets or shares in Kazakhstan companies);*
- *CEC is subject to meeting quantitative thresholds (equivalent of approximately US$68M); and*
- *CEC is valid for one year from the issuance date.*

Merger Clearance — Improvements

Over the last few years there have been sizeable improvements in Kazakhstan's merger-control process, including:

- *a reduced volume of information disclosure*;
- *a post-transaction notification was introduced for certain transactions (e.g. mandatory business-related instructions, where the same person considers holding decision-making positions in different companies). An applicant may still, upon discretion, apply for pre-transaction approval;*
- *CEC quantitative statutory thresholds were raised: (i) from 25% to 50% of the voting shares and (ii) "assets" tests—the acquirer group's (and of a target company) aggregate value of the assets or total sales volume — up from the equivalent of approximately US$14M to US$68M;*
- *intra-group transactions and incorporation of a new legal entity are expressly exempt;*
- *the application review period was shortened from 60 to 40 calendar days.*



Merger Clearance—Still Room for Improvement

As practitioners, we note there is still room for improvement, such as:

- *implementing a truly functional e-filing and online tracking system for filed applications to eliminate the notorious "human factor";*
- *enhanced monitoring of a regulator's compliance with statutory deadlines and arbitrary suspensions/ extensions of consideration terms;*

- *setting sensible limitations on the amount of information requested on public companies since most information is publicly available (for instance, the Kazakhstan Securities Central Depositary is a good example);*

- *carving out transactions outside of Kazakhstan when a foreign company has a dormant subsidiary/ branch in Kazakhstan; and*

- *linking the statutory threshold (as an alternative criterion to the current approximately US$68M threshold) to a percentage of the target's (and buyer's) assets or market cap — this is particularly relevant for global companies with huge market capitalizations.*

A reduction in bureaucratic barriers (including those mentioned above) should make the merger clearance less burdensome and more predictable.



2019 Available Official Statistics
(based on the Agency's annual report)
For illustration purposes and to provide a general view on the volume of the Agency's supervisory activity, we highlight the relevant statistics below:

a) merger clearance - a total of 118 filings:
- *84 applications – 79 approvals, 1 conditional approval, and 4 rejections;*
- *34 post-notifications – 1 instruction received to terminate a transaction due to competition restriction.*

b) investigations - 87 completed investigations:
- *43 anti-competitive agreements (49%), 22 of which were state procurement collusions*
- *19 on anti-competitive actions by state authorities (22%);*
- *19 - abuse of a dominant or monopoly position (22%); and*
- *6 - unfair competition (7%).*

c) collusion in state procurement

The *Agency* manually monitors etrading platforms to identify sham competition. In contrast, Russia's FAS uses artificial intelligence (AI) software called "*Big Digital Cat*" ("*Большой цифровой кот*" in Russian). It is expected that analogous AI software will be implemented in Kazakhstan as well.

d) notices of breach of law - 558 notices – 519 93%) of the breaches were cured and 34 (7%) were uncured:
- *198 – anticompetitive actions by state authorities;*
- *197 – anticompetitive concerted actions by market participants;*
- *80 – abuse of a dominant or monopoly position;*
- *55 – unfair competition; and*
- *28 – anticompetitive vertical agreements.*

e) warnings (admonitions) - 40 warnings – 35 regarding anti-competitive concerted actions, 4 regarding abuse of a dominant/monopoly position, and one regarding unfair competition



Conclusions - Key Trends

1. *The advent of a pro-active enforcement/ "smart" approach — a focus on preventive measures and compliance, notification of a breach of the anti-monopoly law without performing an investigation, and scrutiny of anti-competitive agreements.*

2. *De-monopolization of monopolies (state and private) and continued privatization.*

3. *New legislation per OECD standards.*

4. *Further digitalization of government services.*

5. *Competition poised to be enhanced in commodity markets.*

6. *Further harmonization with EEU anti-monopoly laws.*



Almaty, Seyfullin ave. 506/99
+ 7 727 300 33 00

RIXOS
ALMATY

www.rixos.com
almaty@rixos.com

RULE OF LAW AND JUDICIAL REFORM

by Aigoul Kenjebayeva
Managing Partner
Dentons Kazakhstan & Central Asia

Many events occurring in the world today are alarming: wars in Syria, Azerbaijan, ethnic conflicts, weakening of international law and the principles of democracy, to name just a few. Yet only strict adherence to the principles of the rule of law can help mankind survive and achieve sustainable development for all.

During Kazakhstan's thirty years of independence, state policy towards building rule of law has experienced several ups and downs. The current situation with rule of law in Kazakhstan is contradictory – on the one hand, clear signs of progress, but on the other, serious deterioration in certain areas.

The need for fundamental change in Kazakhstan's entire governance system is increasing. In recognition of this need, important steps have been taken, but mainly at the senior level of government, while the lower levels of state institutions remain overly bureaucratic, inflexible, and resistant to change.

It becomes clearer every day that the state in general fails to deliver on many important aspects of the goals laid out in the Constitution and in other laws. Due to this failure, civil society has no choice but to step in and take these tasks on itself. Many non-governmental organizations, civil society organizations, and funds are being created every day. The state recognizes the pressure and tries to accommodate the needs by certain changes, such as creation of public councils at every level of the state structure, but unfortunately these steps do not really help. More serious measures are needed.

As correctly pointed out in the USAID report on its website, "civil society organizations (CSOs) and independent media outlets face an increasingly difficult operating environment and often struggle with financial sustainability. Another key constraint to effective governance is the lack of perceived independence of the judiciary, which hinders the country's ability to attract foreign investment and uphold the rule of law."

The article that follows discusses several recent noteworthy developments.

Investment Agreements Introduced

One of the most recent and positive developments in the regulation of investments is the introduction of a new form of cooperation – the ***Investment Agreement*** (which entered into force on of 16 January 2021) in Article 295-2 of the ***Entrepreneurial Code***.

Readers may object that several types of investment contracts already exist. Why would another one be needed? Indeed, various types of investment contracts have been introduced in Kazakhstan over the years.

- The first investment contracts appeared in the 1994 ***Law on Foreign Investments*** and the concept was then moved to the ***Law on Investments***.
- In 2012, the ***Law on Investments*** significantly broadened the regulation of investment contracts. This concept was then included in the ***Entrepreneurial Code*** (*Article 294*).
- In addition, the ***Entrepreneurial Code*** introduced in 2014 a new type of contract – the ***Priority Investment Contract***.
- Another type of contract – the ***Special Investment Contract*** – appeared in the ***Entrepreneurial Code*** (*Article 295-1*) for activity in special economic zones.
- And finally, there are now new investment contracts called ***Investment Agreements*** (*Article 295-2 EC*).

All types of investment contracts have a lot in common: they include various tax and customs exemptions and other incentives. However, in practice we do not have a large number of such contracts. One of the most important drawbacks of these contracts is that they must be concluded on the basis of "model" contracts.



Unfortunately, in reality "model" contracts are viewed by state officials as being cast in stone with no possibility to deviate from them, and this denies the projects any flexibility. It is most likely that the biggest advantage of the concept of a new *Investment Agreement* is that a "model" contract is not envisaged, i.e. the parties are free to negotiate commercial terms within the limits established by law. We have yet to see whether this new type of investment contract will work.

Administrative Procedure and Proceedings Code



- In 2020 Kazakhstan adopted the *Administrative Procedure and Proceedings Code* (*APPC*), the effective date of which is 1 July 2021.
- According to Kazakhstan's legislation, the *APPC* is designed to establish effective mechanisms to protect the rights of private entities in disputes against state authorities.
- The *APPC* provides for new legal regulation of two important fields: (1) administrative procedures; and (2) administrative proceedings (litigation).

Principles

- The *APPC* introduces a number of new principles, such as:
  - ► Priority of private entities' rights in administrative procedures;
  - ► Protection of the administrative procedures' participants right to be trusted;
  - ► The active role of the court.

How will these new principles be applied in practice? On this subject, the Dentons' team has already prepared a series of questions for clarification by the Supreme Court of Kazakhstan.

Administrative Procedures

- The *APPC*'s administrative procedures provide the rules of pre-trial appeal against the acts of state authorities.
- The *APPC* introduces some new elements for regulation of administrative procedures. One of these is a mandatory pre-trial appeal against the state authorities' acts and decisions.
- Another new element is that an appeal against the acts of state authorities would not automatically suspend these acts as under the previous law but would suspend them only if it was necessary to protect the rights of citizens, legal entities, or public or state interests. This new provision may completely cancel the auto-suspension of an administrative act, since the second party in a dispute is a state authority.

Administrative proceedings

- Upon the *APPC* becoming effective, disputes arising out of public law relations will be heard under the rules of the *APPC*. In this respect, the President of Kazakhstan recently issued a decree creating 21 specialized administrative courts across Kazakhstan.

The Astana International Financial Center Court (AIFC) and Arbitration are Gaining Strength

AIFC Astana International Financial Centre

Many citizens of Kazakhstan did not like the idea of creating a special court at *AIFC* that is outside of the Kazakhstan's court system. Why create something special to serve investors, not the country's population as a whole? Why not conduct large-scale reform of Kazakhstan's entire legal system and business environment, and gradually provide everybody with benefits equal to those provided by the *AIFC*? After all, it is unconstitutional to have rights applied to only some people, and not to others.

On the other hand, it was clear the country needed to do something very quickly. There was no time to wait for widescale reform and so a political decision was made to create the *AIFC*. The required legal framework has been established, including an

amendment to the Constitution. The language of this amendment has been criticized as somewhat narrow, which could become problematic at some point.

The initial idea was that the *AIFC* should be an institution almost completely separate from the state authorities, with its own territory, regulations, governing bodies, court and arbitration center. However, complete independence of the *AIFC* Court and *IAC* is questionable.

First of all, financing of their activities is totally provided by the state, including waiver of the court fees. Secondly, these institutions have been created at the state's political will and therefore can be terminated at any moment, thus depriving the parties of a dispute resolution forum unless they have an alternative option.



As time passes, a certain transformation is occurring: The *AIFC*'s ties to Kazakhstan are getting stronger and the *AIFC* is getting closer to Kazakhstan's soil and realities ("*Mainland*"). This process is twofold:

1. Cooperation and interaction with the *Mainland*;
2. Influence on the *Mainland*.

These two processes can be clearly seen in activities of the *AIFC* Court and *IAC* described in detail on the *AIFC* Internet site.

Regulation of the Legal Profession

One of the main areas where improvements are very much needed and where improvements can come to fruition quickly is regulation of the legal profession. Unfortunately, ever since Kazakhstan gained independence this issue has been to a great extent neglected, which has caused serious problems for the country, as a whole generation of lawyers has been brought up in an atmosphere of permissiveness and without any regulation. Criminal lawyers (advocates) were regulated by a special law, but the law was not adequate to encourage advocates to conduct themselves as part of the justice system.

Reform of regulation of the legal profession was undertaken in 2018, but although it introduced a certain level of regulation of lawyers, it was unfortunately half-hearted. As a result, a unified legal profession has not been created and, most importantly, an opportunity to establish a high-quality unified code of ethics and rules of professional conduct has been lost. The events of the past year, when the legislator attempted to impose certain unjustified restrictions on lawyers, showed that regulating lawyers will not be easy.



In the meantime, the court system, which has undergone serious reform, has demonstrated that it is now ready for a deeper reform. This reform should involve introduction of the concept of a "duty to the court" for the professional representatives in court and transformation of the role of lawyers from pure defenders of their clients into "officers of the court". This transformation would of course also require a change in the attitude of the judges to the lawyers.

This concept was discussed at a meeting of the Supreme Court's International Council and received the full support of both the Council and the Chairman of the Supreme Court. Work in this direction is underway. Hopefully, this reform will be instrumental in not only elevating the legal profession to higher standards of professional behavior but, most importantly, it would promote Kazakhstan's rule of law to a higher level.



KAZAKHSTAN'S LONG ROAD TOWARD JUDICIAL REFORM

by Anthony Mahon, Partner and Leader
Caspian Energy and Resources, Deloitte Kazakhstan

Olessya Kirilovskaya, Director,
Tax and Legal, Deloitte Kazakhstan

Deloitte.

Kazakhstan's government has consistently shown a desire for the country to be seen as being open for business and foreign investment. The country has made significant strides in many areas with its business climate having improved significantly over the past decade. However, major issues remain.

Many of the most acute issues are brought into sharp relief when investment climate expectations upon which investments are made do not in fact align with the realities of doing business in Kazakhstan – most notably, the dysfunctions encountered (and impact on business effectiveness and profitability) when interfacing with governmental authorities.



The major primary dysfunctions that continue to impact investors are the inconsistency, lack of transparency, predictability, and stability of both the administration and enforcement of laws. In an attempt to address these issues, Kazakhstan is currently planning a number of reforms; two of the most noteworthy are introduction of the *Administrative Procedural Code* and the associated process of *Judicial Reform*.

The *Administrative Procedural Code* regulates relations related to performance of administrative procedures by the state authorities, interactions between state authorities and entities/individuals, as well as procedure of administrative court hearings. The *Code* entered into force on 1 July and replaces The *Law on Administrative Procedures* and The *Law on Consideration of Applications of Entities/ Individuals*. The reform enshrined by this new Code should be viewed positively as the two laws it replaces feature significant jurisdictional overlap and associated ambiguities.

The main purpose of the new Code is to reform the interaction between the state authorities and companies/individuals in a more efficient manner. Some of the main principles include:

- *Prohibition of "abuse of formal requirements" (essentially prohibiting state authorities from using narrow interpretations of the "form" of legislation to deny application of the substance of its intent to investors);*
- *Presumption of guilt of state authorities;*
- *All legislative ambiguities to be interpreted in favor of the taxpayer.*

In terms of *Judicial Reform*, the Code provides for the formation of new courts, whose remit shall be consideration of administrative cases initiated in relation to the actions/ lack of actions by state authorities (ie. regular courts will not deal with such cases anymore - as they do now under *Chapter 29* of the *Civil Procedure Code*).

Potential benefits to investors include a clearer appeal procedure for actions/ lack of actions of the state authorities, more straightforward timelines, and less cases for the economic courts to deal with, allowing them to concentrate on actual economic cases.

Within the Judicial Reform framework, one of the principle reforms is that of extraterritorial jurisdiction – ie. the allocation of cases across the country to achieve an even caseload and a reduction in the time taken for cases to be heard in court. The benefit of this system is that the court cases will be distributed more evenly.

When courts have heavy caseloads, fewer and shorter hearings tend to be held in order for the court to be able to meet the deadlines for consideration set out in legislation. For example, the *Nur-Sultan Investment Court* used to have one preparatory and two-three main hearings prior to making any decisions and now it usually has one preparatory and one main hearing upon which decisions are made. Therefore, a more even allocation of cases will allow the courts to understand cases better and potentially improve the quality of judgements delivered. Another upside is that the parties cannot know in advance which court the case will be allocated to, thus potential risks of corruption are somewhat mitigated.

However, these benefits must be balanced against the risks of not all courts having the same level of technical expertise. For instance, the courts of Almaty and Atyrau see very different cases as compared to

courts of Aktobe and Shymkent due to the specifics of the region and businesses located there. Therefore, even a well-distributed system cannot guarantee that the cases will be considered with the same quality of expertise by any court.

However, it is expected that the system will allow the parties discretion in agreeing (or not) for cases to be heard by the newly allocated court or to remain with a local court. It should be noted that investment courts will not be subject to the extraterritorial jurisdiction, therefore investment disputes shall remain unimpacted by this reform.

Although the above reforms should be viewed overall in a positive light, much work remains to be done and the *Judicial Reform* process must continue to be pushed forward. Investors continue to routinely suffer at the hands of the courts in Kazakhstan as a result of the following factors and so advocacy efforts must continue unabated to stimulate action from the government to address:

Lack of unified court practice. Currently even the same court may issue different decisions on similar cases – there is an absence of consistency between decisions of the same court. This lack of consistency is even more obvious in different courts of different regions. Inconsistency is clearly visible when examining court practice and judgments.

Lack of technical experience. Some courts have already had practice in certain cases, while others have not. In this context, the redistribution of cases as per extraterritorial jurisdiction could run contrary to the interests of investors. However, it will undoubtedly help the fight against corruption, the main purpose of this arrangement

Political will. Investors continue to suffer from the long-standing trend that the appeals of the state authorities are more likely to be satisfied than claims of companies.

Lack of tax expertise. Currently, after introduction of the legislation on legal consultants, tax disputes are litigated by lawyers, the only tax experts are state authorities, who are fighting for their own position. Some cases referred to the courts are so complex that the tax authorities do not have a determined position themselves. As a result, the court, itself lacking expertise in tax cases, is not getting a full picture.

These issues continue to impact the investment climate in Kazakhstan but there are a range of ways in which the business environment could be improved; some of which are relatively straightforward and some of which would require more fundamental reforms:

Strengthening of expertise. For extraterritorial jurisdiction to be truly effective, judges must be trained and possess a minimum standard level of knowledge and tax experts should be mandatory in tax case hearings. Currently the appointment of subject matter experts is at the court's discretion and is a request which is often denied.

Supreme Court guidance. The Supreme Court should provide more prescriptive guidance in its normative rulings; such guidance should not be ambiguous and should not allow multiple interpretations

Accountability. Courts/judges should be accountable for decisions out of line with prevailing court practice and must be required to give detailed reasoning for such deviations;

Finally, and most importantly; **Independence**. Court judgements should be based purely on the merits of each case in the context of prevailing laws, not in the context of any budgetary or political considerations. Claims and appeals by state authorities should not be more likely to be successful than those of non-state plaintiffs.

There have been some examples of extremely positive reform being enacted in Kazakhstan such as the creation of *Investment Courts* and the recent introduction of the *International Council of the Supreme Court*. (This Council can issue opinions at the request of the court, as a result of which there has been very positive recent investor experience where the Court was open to the opinion of external subject matter experts which helped to resolve cases in favor of investors).



In a relatively young jurisdiction such as Kazakhstan, the road towards an established, mature legislative and judicial framework is long, yet progress along this route has undoubtedly been made to date. However, these latest reforms are not the end of that journey. Investors and advocates must continue to push Kazakhstan's government to continue the reform process until the most material dysfunctions that continue to blight the investment climate are finally eliminated.


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Almaty
Samal Towers
97 Zholdasbekov Street
Almaty 050051 Kazakhstan
Tel: +7 727 330 05 00
Fax: +7 727 258 40 00
almaty@bakermckenzie.com

RENEWABLE ENERGY IN KAZAKHSTAN

by Ambassador André Carstens
Ambassador of the Netherlands to Kazakhstan

Embassy of the Kingdom of the Netherlands

With its vast reserves of oil and coal, Kazakhstan is one of the top twenty global producers of primary energy resources. It ranks among the top ten coal producing countries and 11th globally in the amount of proven oil reserves. Also, it has one of the world's larger bases of proven natural gas reserves.

Consequently, Kazakhstan's economy is heavily reliant on fossil fuels: around 10% of GDP is dependent on oil revenues, around 70% of merchandised exports are fuels. Close to 89% of electricity was generated from fossil fuels in 2019: with coal accounting for around 70% of electricity generation, and natural gas for around 19%.

Therefore, Kazakhstan can be characterized by an unsustainable model of energy production and consumption. A variety of reasons underlie this phenomenon. A legacy of energy-intensive post-Soviet infrastructure, abundant domestic supplies of fossil fuels, and climatic conditions (long, cold winters) all play a role in driving energy use and emissions.

The good news, however, is that Kazakhstan's conditions are favorable for renewable energy (RE). Wind speeds of 4-5 m/s at an elevation of 30 m is typical for approximately 50% of the territory of Kazakhstan, there is solid hydro potential and solar hours amount 2.200 – 3.000 per year.

In 2009, Kazakhstan, as a first step, adopted the law *On Support for the Use of RE Sources* in order to stimulate development of the RE sector. Few years later, in 2013 the country adopted the *Concept of Transition to a "Green Economy"* and set targets for the share of RE in total electricity generation over the years up to 50%. At the end of 2020, Kazakhstan declared to become climate neutral by 2060.

share of RE in total electricity generation	
3%	2020
6%	2025
10%	2030
50%	2050

The need to bring down the cost of RE generation by increasing competition (and hopefully transparency) among bidders, triggered the introduction of auctions. The *Financial Settlement Centre (FSC)* was made responsible for the auction process and for signing of long-term contracts to buy renewable energy in agreed volumes and prices (so called: *Purchase Power Agreements or (PPA's)* with auction winners.

From 2018 to 2020, 25 auctions were held with a total capacity of 1.5 GW. These auctions were attended by 172 companies from 12 countries, including: *Kazakhstan, Netherlands, Germany, France, Spain, Italy, Bulgaria, China, Russia, Turkey, Malaysia, and the United Arab Emirates*.

RE development milestones	
2009	New law to support the use RE sources
2013	Introduction of fixed tariffs
2014	Establishment of the Financial Settlement Centre (FSC) of RE sources
2017	Introduction of auctions
2018	First auctions
2020	Launch of a hydro-power development plan for 2020-2030

The further development of the RE market in Kazakhstan is key for diversification of its energy sector. In recent years, Kazakhstan has signed a number of agreements and memorandums with international financial institutions and organizations for an amount of about 513 mln. Euro.

Investors from 12 countries, as well as large financial institutions such as *EBRD, ADB, Asian Infrastructure Investment Bank*, and *DBK*, are currently working in the green energy sector. Also, large oil companies such as *TotalEnergies, Shell*, and *Eni*, are considering development of RE projects.

Kazakhstan will continue to hold auctions, but in a much smaller volume, due to the capacity of the existing networks, which are significantly worn out and require renewal. The next RE auctions will take place at the end of 2021; conditions will be published by the *Ministry of Energy* four to five months in advance.

No license is needed for development of small renewable energy plants (i.e. installations up to 100 kWh). This allows SME's - and even any household - to contribute to the overall goals while enjoying cost saving and other benefits.

RENEWABLE ENERGY OPPORTUNITIES IN KAZAKHSTAN

by Agris Preimanis
Kazakhstan Country Director
European Bank for Reconstruction and Development (EBRD)

Kazakhstan joined EBRD in 1992 and since then has become one of the Bank's high-priority countries with a total investment portfolio of EUR 2.5 billion (as of May 2021), of which 66% of the funds are allocated to the private sector. One of the EBRD's targets is to promote secure, affordable, and sustainable energy through the transition to a market-oriented low-carbon energy sector. This strategy is applied in all countries of EBRD operations.

The EBRD is the largest investor in sustainable energy in Kazakhstan, covering both renewable energy and energy-efficient technologies, representing around 22% of the Banks's overall portfolio in the country. The development of a renewable energy generation is a key condition for Kazakhstan to meet the ambitious decarbonisation goals the country accepted under the *Paris Agreement*, as well as to achieve carbon neutrality in 2060 as announced by President Tokayev.

Kazakhstan's exceptional renewable energy potential, especially for wind, solar and hydro resources, as well as an aged fossil-fuel based infrastructure, create a favourable environment for installing more renewable capacities and steady replacement of coal generation. However, established legal mechanisms and economic incentives are needed to attract investors to this relatively new industry for Kazakhstan.

The EBRD successfully combines investments with policy engagement in order to further help Kazakhstan develop a supportive regulatory framework for the transition to a greener energy sector. For instance, the Bank participated in modelling the social impact of a renewable energy feed-in tariff in 2013, assisted in the development of renewable energy legislation from 2014 to 2016, and reviewed the RES power purchase agreements' bankability.



The Bank is currently working on implementing auctions for three wind farms in Kazakhstan to be conducted in 2022. Technical cooperation with EBRD for the auction includes site selection for the plants, measurement of available wind resources, and regulatory support on the tender process and documentation. For this project, EBRD has involved experienced international consultants to ensure the high transparency and fairness of the process needed to attract top-notch developers and investors.

In September 2019, in order to address the implications of climate change for Kazakhstan, the country's Ministry of Energy and the EBRD signed a Memorandum of Understanding (MOU) reaffirming the Bank's commitment to support renewables projects in Kazakhstan and focused on financing competitively tendered renewables projects. In addition, this March EBRD signed another MOU with the Ministry of Energy to extend cooperation on Kazakhstan's long-term decarbonisation strategy.

As part of this agreement, EBRD will provide technical assistance to develop a long-term roadmap for decarbonisation of the energy sector together with other support for meeting the sector's decarbonisation targets. This work will focus on formulating and implementing a long-term strategy for development of the power sector in order to achieve carbon neutrality by 2060.Thanks to continuous improvement of the legal framework, as well as the introduction of new measures to strengthen investment-stimulating mechanisms, the government of Kazakhstan was able to meet the target of 3% generation in 2020.

But this is only the beginning of the transition journey. The country's next aim is to reach 6% generation by 2025 and 15% by 2030. In order to scale up the success to date, Kazakhstan must undertake structural changes in the energy mix, introducing flexible capacities and strengthening the electricity grid to accommodate more renewable generation without jeopardising the system's sustainability. And so EBRD, in addition to renewables, is considering investing in electricity transmission companies and gas-fired generation, especially in the context of coal-fired plants' modernisation to use gas as transition fuel with subsequent replacement for green hydrogen.

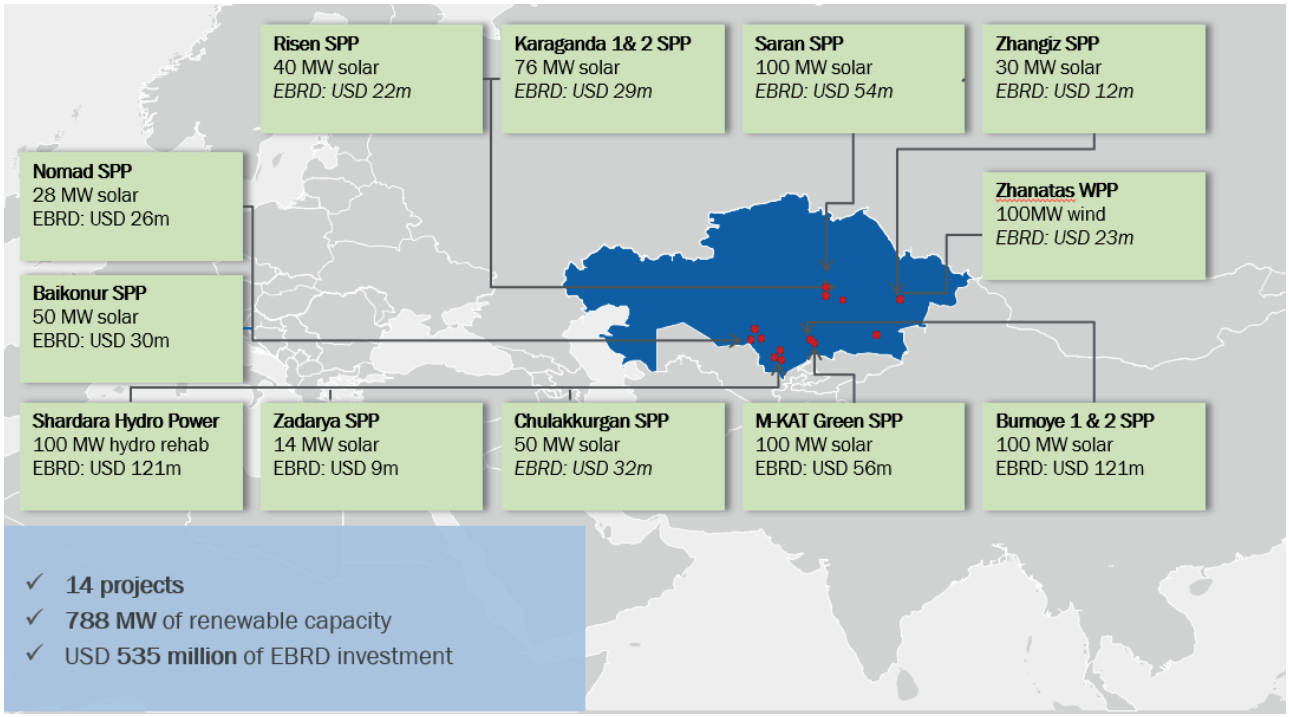
To simplify internal approval of projects and facilitate investments in the region, the EBRD launches country and sector-specific framework programs, which allow fast-track financing of projects with similar features. Since 2016, the Bank has approved two tranches of the *Kazakhstan Renewables Framework* for 500 million euros of EBRD loans. In addition to EBRD funding, the Framework is supported by USD 110 million concessional finance from the *Green Climate Fund (GCF)*.

To date, half of the funds allocated under this program has been invested in construction of solar and wind power plants in various regions of Kazakhstan. Overall, out of 1.7 GW of renewable energy projects launched in Kazakhstan, the EBRD has financed, jointly with climate funds, 688 MW of installed capacity with total cost of these projects exceeding USD 900 million. It is expected that once operational, the projects will contribute to GHG emission reductions by more than one million tonnes of CO2 annually.

EBRD partners in Kazakhstan's renewable sector are mainly private investors from China, the UK, France, UAE, Germany and other countries, as well as multilateral financial institutions and climate funds. Two of the Banks' solar projects (*M-KAT* and *Baikonur Solar* in southern Kazakhstan) were financed together with the *Asian Development Bank (ADB)*, while the *Asian Infrastructure Investment Bank (AIIB)* became our co-lender on the EBRD's first wind transaction.

The great example of an EBRD-financed renewables project is a recently signed deal with the 100 MW *Zhanatas Wind Power Plant* in Kazakhstan's Zhambyl region co-financed by the *Green Climate Fund*, *AIIB* and *ICBC Almaty*. The EBRD has committed to provide a senior loan of up to KZT 10,847 million (USD 25 million equivalent) for construction and operation of this plant, including construction of 8.6 km of a 110kV single circuit line necessary to connect the station to the grid. The project is developed by *China Power International*, the first Chinese SOE investor in the Kazakhstan's energy sector, as well as by *Visor International*, Kazakhstan's leading private equity fund. The total amount of investment attracted to this project is close to USD 140 million and the plant is expected to generate 320 GWh of electricity annually, contributing to about 260,000 tons of CO2 emission reductions every year.

This is the EBRD's first project in Kazakhstan's energy sector co-financed by a commercial bank (ICBC Almaty), an important precedent for the bankability of renewable projects in the country. As part of this project, the EBRD will work with the sponsors to support women's access to economic opportunities in the country's renewable energy sector, including through access to high-quality technical skills training programs organised in *Zhanatas*, and policy dialogue to develop gender-sensitive vocational guidance.



EXPANDING KAZAKHSTAN'S TRADE LINKS: ASIAN DEVELOPMENT BANK CAREC INITIATIVES

by Kristian Rosbach
Senior Economist
Asian Development Bank (ADB)

ADB ASIAN DEVELOPMENT BANK

The *Central Asia Regional Economic Cooperation Program (CAREC)* is a partnership of 11 member countries and several development partners working together to promote regional cooperation and integration across countries. CAREC member countries are *Afghanistan, Azerbaijan, People's Republic of China, Georgia, Kazakhstan, the Kyrgyz Republic, Mongolia, Pakistan, Tajikistan, Turkmenistan,* and *Uzbekistan*. CAREC is based on the consensus principle and is mainly focused on investments with regional significance in transport, energy, and trade facilitation.

Since its inception in 2001, *CAREC has mobilized almost $40 billion in investments* that have helped establish multimodal transportation networks, increased energy trade and security, facilitated free movement of people and freight, and laid the groundwork for economic corridor development.

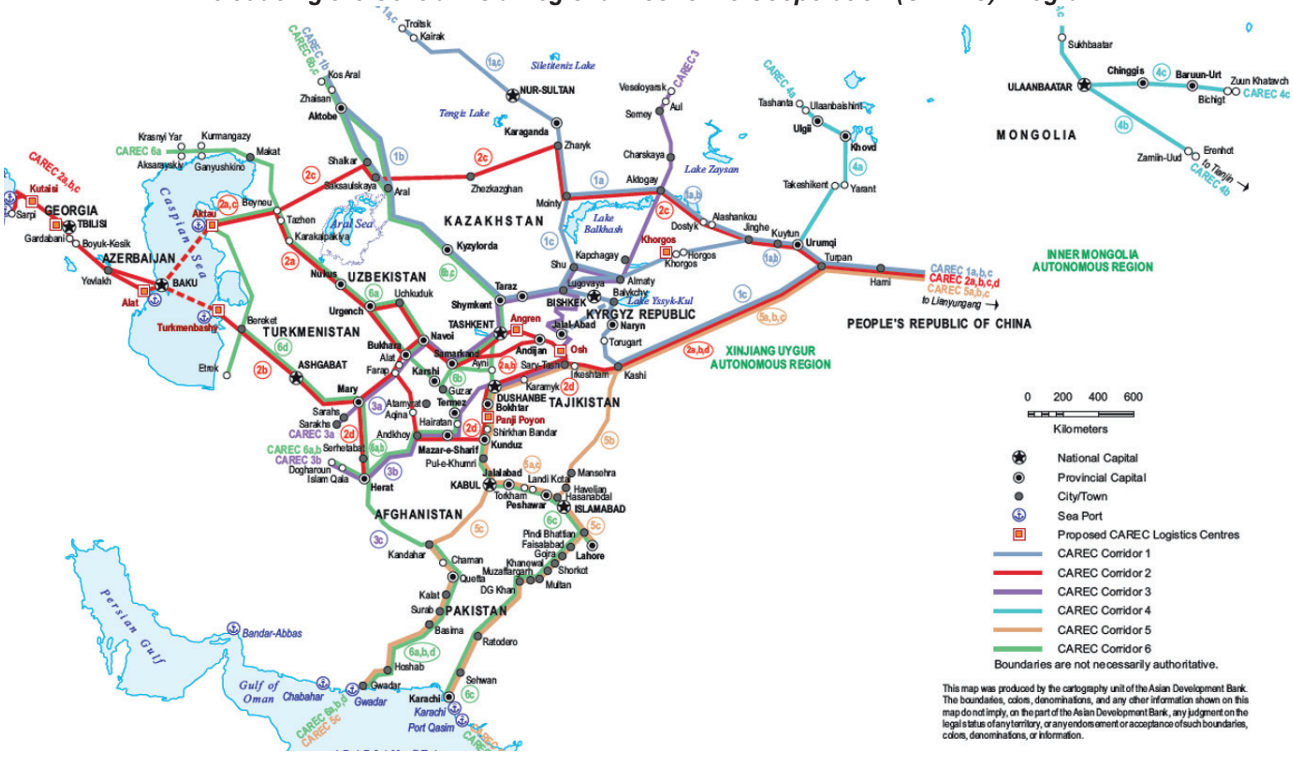
Of this amount, *nearly $30 billion have been invested in 137 transport projects* along the six CAREC transport corridor routes, that you can see here on the map. The transport network is the backbone of CAREC but the program is now expanding into other areas like macroeconomic policy coordination, regional tourism development, and disaster risk management under its new *CAREC Strategy 2030*.

Facilitating trade is a long-standing goal of the CAREC program. The *CAREC Integrated Trade Agenda (CITA) 2030* was endorsed by the *CAREC Ministerial Conference in 2018*. The Agenda aims to support CAREC members integrate better into the global economy. The strategy is implemented by various policy advisory regional technical assistance grants, but also infrastructure projects, for example, to modernize border crossing points.

The strategy is clustered into 3 pillars:

Pillar 1: Support to open trade policies and stronger customs cooperation includes measures to lower tariffs, eliminate non-tariff barriers to trade, make at-the-border and behind-the-border procedures more efficient, improve logistics services. One example is single window custom regimes.
Pillar 2: Support an environment for economic diversification includes measures to improve access to trade finance, improve foreign direct investment policies, and develop domestic financial markets.
Pillar 3: Support trade Institutions includes alignment of national with regional planning, and regulatory convergence among members. One example would be support to WTO accession and implementation of trade agreements.

Introducing the Central Asia Regional Economic Cooperation (CAREC) Program



An example for a CAREC trade facilitation initiative is *the CAREC Advanced Transit System and Information Common Exchange Pilot Project (CATS). CATS* is a harmonized electronic system to control movement of goods in transit through CAREC Member States. It is being piloted in Azerbaijan, Georgia, and Kazakhstan. *CATS* makes cross-border passage of goods easier and reduces trade transaction costs. This is achieved by:

- *harmonizing existing transit documentation;*
- *creating a single electronic messaging system; and*
- *providing a risk-based guarantee mechanism that rewards compliant traders*.

Once fully rolled out, *CATS* will help *CAREC* markets connect among each other and with the European Union market as it is modeled after the European Union computerized transit system *(NCTS).*

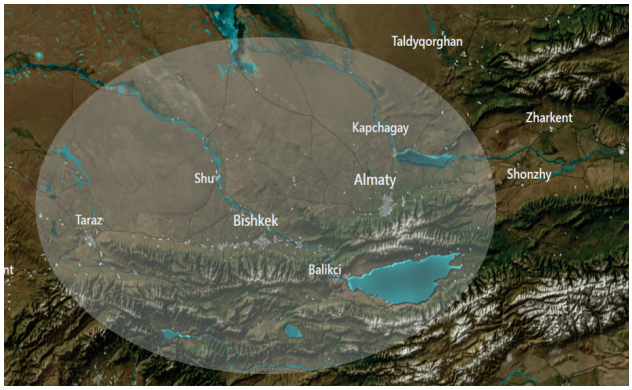
Another example of a CAREC trade facilitation initiative is the *Regional Improvement of Border Services (RIBS)*. In the CAREC region, a number of border crossing points pose serious impediments to cross-border transport and trade.

For example, estimates from the 2019 *CAREC Corridor Performance Measurement and Monitoring (CPMM)* reveal that on average, more than 90% of the total stopping time of a typical 20-ton truck's 500-kilometer journey occurs at *BCPs*, amounting to 11 hours. Of this time, more than 7 hours are spent waiting for border crossing formalities. This is a huge cost to business and ultimately to the consumers.



RIBS projects are designed to modernize border crossing point infrastructure along *CAREC* corridors and help develop national single windows *(NSW)* in these *BCP*s. *RIBS* is currently implemented under ADB financing in four CAREC countries, starting in the Kyrgyz Republic and Tajikistan (2013), then Mongolia (2016) and Pakistan (2017).

A *CAREC* initiative that includes trade facilitation and regional cooperation in numerous sectors between Kazakhstan and the Kyrgyz Republic is the *Almaty-Bishkek Economic Corridor (ABEC)*. The corridor includes the cities of *Bishkek* and *Almaty*, as well as *Almaty* and *Zhambyl Oblasts* on the Kazakh side and *Chui* and *Issyk-Kul Oblasts* on the Kyrgyz side. *ABEC* aims to create an integrated cross-border region. The goal of the economic corridor is to bring the two cities' economies closer together and to create a larger, more competitive market.



Under *ABEC*, the Kazakh and Kyrgyz governments, jointly with ADB, conceptualize regional tourism investments, modernize wholesale markets, simplify border crossings, and create a regional network of medical laboratories. One ABEC goal is to improve border crossing points (*BCP),* major bottlenecks between Kazakhstan and the Kyrgyz Republic.

The border is the first impression contact with a country for tourists and is therefore important from a tourism perspective. *BCP*s can hinder trade and sometimes cause unpredictable delays for the travelers and traders.

To improve the situation, *ABEC* has developed design and process proposals that are now being implemented by both governments in the modernization of *Korday/Ak-Jhol* and *Kara-Suu-Ak-Tilek BCP*s. A consultant team has made the following suggestions:

1. ***Ensure free and direct access*** of all types of traffic to the nearest control cabin.
2. ***Control proceeds*** while the driver and any passengers remain inside the busses.
3. ***One-Stop Control***: All controls are completed in the same place and simultaneously.
4. ***Apply Risk Management to all controls***, particularly to physical checks
5. ***Compliant vehicles are immediately released***, whereas any units that require additional time for control are directed to a separate location.

6. ***Limit the types of controls*** *to*: Radiation, Passport & Registration, Cargo/Luggage and Health.
7. ***Automate all controls to the extent possible*** – and, subject to agreement and acceptance - share results automatically and electronically across border to avoid repetitive controls.
8. ***Monitor and enforce time standards***

ADB is currently preparing an investment project to support the modernization of *Karkyra, Ak-Tilek*, and *Kichi-Kapka BCP*s with the Government of the Kyrgyz Republic. Another *ABEC* project is aiming at modernizing Agriculture Wholesale Markets in both countries and facilitating easy trade of fresh produce. That both countries joined the Eurasian Economic Union was a significant step forward but delays at the border are still common, especially for food products.

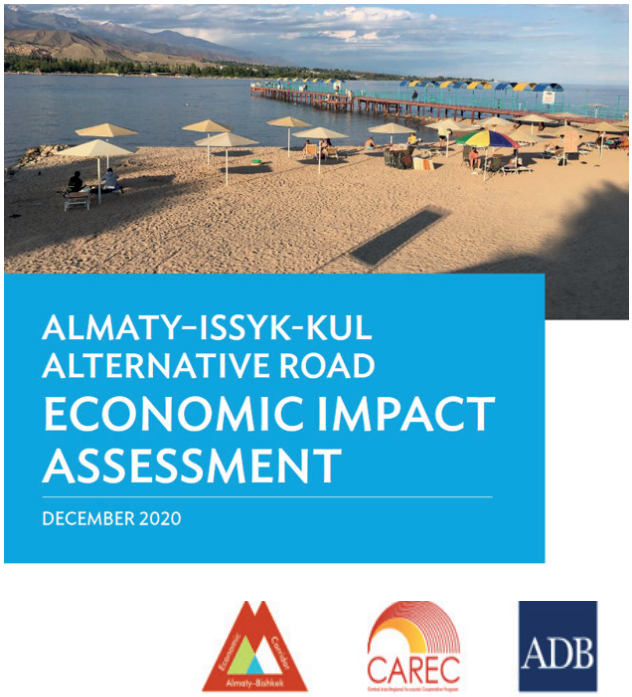


Under *ABEC*, a Master Plan for the development of wholesale markets and agri-logistic centers was prepared with focus on:

- **Food Safety** (SPS, modern market facility),
- **Food Security** (price stability, extended seasonality, grading), and
- **Food Exports** (certified and branded exports, develop niche markets like organic, sanitary and phytosanitary controls)
- **Consider focusing functions of wholesale markets in urban context** (business-to-business, traffic congestion, food safety standards)
- **Modernize Almaty Wholesale Market Infrastructure**
  - ► **Modernize** trading, storage, processing, laboratory SPS infrastructure in Almaty
  - ► **Formalize trade** and gradually separate ownership and trading functions
  - ► **Labelling, certification, and grading** facilities for exports
  - ► **Develop sub-hubs** to divert the focus on the *Altyn-Orda* market

Currently the project preparation is ongoing in cooperation with the Kyrgyz Republic, and a feasibility study is being finalized.

Another *ABEC* initiative is considering a more direct road between Almaty and Issyk-Kul and its economic impact. The idea is that the current road connection around the mountains limit travel between the two destinations to longer holidays. Also, for international tourists, a trip of more than 6 hours is prohibitive and many tourists in Almaty do not visit Issyk-Kul and vice versa.



A more direct road would change that. If travel time could be limited to 3 to 4 hours, this would also make weekend tourism possible. The economic impact assessment looked at the economic and financial feasibility and concluded that a public-private partnership project for a toll road could be a feasible undertaking. ADB is currently working on possible financial structures for the project.

Conclusion

In conclusion, there are many initiatives under the *CAREC* program and *ABEC* initiative to improve trade in the region. Recent years show that constant improvement can show some significant results with trains crossing from China to Europe, thus many countries reducing trade tariffs and joining into custom unions.



Foreign Investments As The Way Of Sustainable Sector Development

JOHN DEERE



Agricultural sector of Kazakhstan today faces huge changes. Digitalization era, when intelligence replaces hard labor, sends primitive tractors and combines back. Future belongs to those, who invest in the most advanced technologies and offer the best solutions for agriculture.

Eurasia Group AG is absolutely this kind of investor – a Swiss based company, a National Dealer of the worldwide leading agricultural machinery manufacturer – John Deere, as well as JCB, Grimme, Lindsay dealer in Kazakhstan.

Having believed in development of free economy and democracy processes in Kazakhstan 20 years ago, a group of German and Swiss investors injected about $65mio, employed more than 400 citizens in Kazakhstan, established 14 representative offices and 14 spare parts warehouses for more than $15mio and 6 workshops all over the country, organized unique Agromanagement department to provide Kazakhstani farmers with the most innovative and digital solutions for agriculture that help to increase productivity, reduce expenses, control operation and produce the highest quality goods.

Today 20% of Kazakhstan land is seeded with John Deere seeding trains and more than 25% is harvested with John Deere combines. For two years the company digitalized 2,3 mio hectares of land!

A special attention the company pays to the social aspect and specialists' education for the agricultural sector. Thus, Eurasia Group AG prepared a system for recruitment, training, education and further development of its future specialists.

Company employees have attractive salaries (higher than average within the sector), comfort labor conditions: pension contributions, compulsory medical insurance, annual paid vacation, loan program and needy families support. Its own retirement program, established by Swiss office, for loyal employees, bonuses and rewards for job results, education opportunities, professional and career progress, advanced training at the best factories and companies all over the world.

Getting the importance of specialists education in line with the demands of the modern agriculture, Eurasia Group AG constantly invest in training of technical specialists and machinery operators of partner companies. Besides, the company cooperates with 6 agricultural universities, teaching students in innovative technologies for agriculture, organizes annual competitions for students, the winners of which visit one of John Deere factories in Europe.

Eurasia Group AG investors provide constant charity support to orphanages, disabled persons, animal shelters, organize action «Road to school» and in 2020 supported hospitals to struggle with COVID-19.

The company mission sounds "We feed the world!". This means that investing in agriculture sector development we help to provide world food security through introduced technologies, educated people and making comfortable environment for development.

Eurasia Group
We feed the world!

Kazakhstan, 010000, Nur-Sultan, Essil district, Karaotkel microdistrict, Kazanat str., 1/1, Business Center "Time", 4th floor, tel. +7 (7172) 55 47 11, +7 (7172) 55 47 12
e-mail: marketing@eurasia.kz eurasiagroup_kz johndeereequipments
tochnoezemledelie.egk www.agromanagement.kz www.agrimarket.kz

5G NETWORKS AND CYBERSECURITY THREATS

by Aidyn Abjanbekov
General Director
Ericsson Kazakhstan

In today's world, 5G networks are becoming the 'circulatory system' of every country's digital economy and society. In this context, cybersecurity for mobile operator networks is critical. 5G networks will enable and support a wide range of applications and functions, extending far beyond the provision of mobile communication services between end-users. 5G networks will provide virtually ubiquitous, ultra-high bandwidth, and low latency connectivity to individual users and connected objects.

Thanks to these technical characteristics, 5G networks are expected to serve a wide range of applications and sectors. In other words, 5G networks will connect billions of devices and platforms and will be integrated into the critical infrastructure of states and governments, including but not limited to power generation and distribution, public and private transportation management, e-payment systems, banks, e-health, smart cities, industrial control systems, sensitive data transmission, and other public safety and security systems.

The cybersecurity of 5G networks is, therefore essential to protect our economies and societies and to enable the full potential of the vital opportunities they will bring. It is also crucial for ensuring the strategic autonomy of the state. Moreover, democratic processes such as elections are also expected to rely more and more on digital infrastructure and 5G networks.

It is essential to remember that 5G will be gradually introduced as an evolution over existing 4G (*LTE*) networks, which means that suppliers (vendors) of the 4G network today will be supplying 5G hardware in the near future. This makes mobile network hardware vendor selection a critical decision for mobile operators in Kazakhstan in 2021. From the point of view of the mobile operator network hierarchy, there are two main subsystems that industry cybersecurity experts (including the *European Union Commission*) identify – *Packet Core Network (PS Core)* and *Radio Access Network (RAN).*

What is *PS Core*? In simple terms, it is a central node that collects all data traffic from all end-user devices (your phones) in the mobile operator's network. This highly critical node collects, encrypts/ decrypts, and transfers/dispatches all data traffic from the entire network.

What is *RAN*? *RAN* refers to a network of base stations deployed all over the country that collects traffic from your phones and connects it to the operator's *Core Network* (including *PS Core*). *RAN* is a less critical subsystem of the mobile operator today from the cybersecurity point of view, but this will change with the introduction of the 5G standard. With some sensitive functions currently performed in the physically and logically separated *Core* (*PS Core* or *CS Core*) being moved closer to the edge of the network, relevant security controls will need to encompass critical parts of the entire network, including radio access (*RAN*).

As mentioned above, some *PS Core* functions will be moved to the *Radio Access Network*. This will allow the network to steer traffic to computing resources and third-party services close to the end-user, thus ensuring low response times and entailing numerous new security challenges. Security challenges refer to threats considered most relevant within the major traditional risk categories: threats related to confidentiality, availability, and integrity of mobile communications.

The EU-coordinated 5G cybersecurity risk assessment followed ISO/IEC: 27005 (risk) assessment methodology. This methodology defines seven major cybersecurity threat actors starting from accidental risks, progressing to individual hackers or organized crime groups, and eventually rising to a state actor or state-backed actor. Threats posed by states or state-backed actors are considered to be the most dangerous. They represent the most serious and most likely threat actors, as they can have the motivation, intent and most importantly, capability to conduct persistent and sophisticated attacks on the security of 5G networks.

In this context, it becomes imperative for the Kazakhstan government to evaluate and potentially introduce policies to mitigate and balance cyber-security risks without delay to ensure the digital sovereignty and integrity of tomorrow's 5G networks.

At the beginning of this article, 5G networks were compared to a human circulatory system, the backbone of every country's digital economy and society. We believe that cybersecurity in the mobile *Core* and *Radio Access Networks* needs to be re-evaluated now, keeping in mind that state-owned Kazakhtelecom controls almost 70% of the mobile communications market.

LABOR MARKET PROGRAMS FOR A SUSTAINABLE RECOVERY

by Nariman Mannapbekov
Head of Kazakhstan Representative Office
Asian Development Bank

ADB ASIAN DEVELOPMENT BANK

The COVID-19 pandemic has had a substantial impact on labor markets and has highlighted the importance of social protection systems in both developed and developing countries. Around the world, many people have lost jobs, experienced reduced wages and working hours, leading to higher unemployment and poverty.

The three pillars of social protection – *social assistance, social insurance, and active labor market policies* – are essential to providing comprehensive support to citizens. But the levels of unemployment and yawning budget deficits brought on by the pandemic have highlighted the need to invest in effective labor market programs to support the economic recovery and countries' resilience to future crises.



Many Asian countries requested external assistance to overcome the pandemic and reduce the impacts on their most vulnerable people. In 2020, the Asian Development Bank (ADB) provided around $10.5 billion to support healthcare, businesses, and social protection measures in its developing member countries. Most of this went to targeted social assistance and social insurance programs, with a minority for labor market programs.

Kazakhstan is a prime example of this, directing both its own funds and those borrowed from external sources to job retainment and employment promotion measures, among others. ADB's $1 billion loan to Kazakhstan under its *COVID-19 Active Response and Expenditure Support Program* helped the government ensure timely cash payments to people who lost their income during the lockdowns.

Around the world, more than 1,600 social protection measures have been adopted by countries since February 2020, but only 169 of them are aimed at strengthening labor market protections. This suggests that many countries have not been paying enough attention to labor market programs so far.

In upper-middle income countries (*UMIC*s) such as Kazakhstan, there has been a mixed response to the activation of labor market programs. In terms of allocation, the Government of Kazakhstan did well by undertaking a few strong measures compared to many other *UMIC*s. Other UMICs allocated fewer resources to their response not because of lack of fiscal space, but because they were already paying close attention to labor market programs before COVID-19. In the People's Republic of China for example, its allocation for labor market programs was almost equal to its social assistance spending even before the onset of the pandemic.

While the recovery is expected to be prolonged with a gradual reduction of cash transfers and wage subsidies, labor market programs can help prevent more people from falling into poverty and unemployment. Governments desperately need to revive labor markets in innovative ways. There is also greater recognition that new and carefully weighted labor market programs are critical in cushioning redundancies, preserving jobs and skills, and keeping disadvantaged workers connected to the labor market.



Governments are faced with difficult choices. They need to put in place appropriate social protection measures while also balancing macroeconomic policy. Allocating more funds to social protection measures may lead to a gap in reserves or an increase in people demanding to retain benefits provided during the pandemic. This could make it difficult for countries to get on the path to sustainable growth. Therefore, having a financial cushion would make it possible to put these measures into practice in a timely and phased way.

It is also key to improve transparency around labor markets, thus rendering them more inclusive and effective. Accelerating vocational education reforms for the workforce to match labor market needs related to Industry 4.0 is also key.

Cohesive sector-specific policy reforms are also important as they are interrelated with social sector policy responses. Moving away from a “coal-based” economy or lack of agricultural support services in some Asian countries has created strong barriers to social and economic development. Moreover, these steps can generate antagonism to labor market programs.



Kazakhstan has done relatively well in responding to the pandemic challenges. Nonetheless, while it has achieved certain positive outcomes, some concerns remain. To accelerate its recovery from the recession, Kazakhstan needs to promote programs that will integrate the working age population back into the labor market and reduce unemployment.

For many vulnerable people working in the informal sector and for young new labor market entrants, the pandemic may have long-term impacts, resulting in increasing social discontent. Labor market programs are a critical tool that could help to mitigate these impacts.



Based on Asian countries’ experiences during the previous shocks of 1997, 2007, and 2014, the Government of Kazakhstan can explore a series of measures. These include prioritizing activation measures through the recovery period, streamlining administration of payments to avoid duplication, and speeding up welfare provision through digital payment solutions. It could also consider adopting systems that cushion people more effectively against income shocks, gradually taper their dependency on welfare assistance, and incentivize sustainable jobs creation. Finally, it could invest more in new labor market programs in order to spend less during the next crisis.

While many countries now face increased budget deficits, mobilizing more domestic resources can help increase their income base. Smartly activating labor market programs can be complementary in that people with jobs will begin to receive their income and bring certain benefits to the state.

Some countries have already begun to create fiscal space to tackle the situation, even as the pandemic continues. The Government has potential to grow the fiscal space available for overall social protection initiatives and expand existing labor market programs. Together, these steps can help ensure a sustainable and inclusive recovery in Kazakhstan.



MASTERCARD: A HOLISTIC APPROACH TO SUPPORTING SMEs AT SCALE

by Rafal Trepka
Country Manager
Mastercard Central Asia

According to research from the *Organization for Economic Cooperation and Development (OECD)*, the COVID-19 pandemic has contributed to the accelerated adoption of e-commerce around the world. New businesses are being created, new customer experiences being formed, and new products and services being offered. The latest report from *Mastercard Recovery Insights* showed significant growth in e-commerce in 2020, with total global spending on online purchases reaching $ 900 billion. In other words, one in five dollars in retail was spent online by shoppers, while in 2019 it was only one in seven.



As a member of the international community, Kazakhstan participates in global trends - today the country is on the verge of a boom in e-commerce. In 2020, a large number of SMEs went online for the first time, and more experienced online sellers expanded their sales channels by joining e-commerce marketplaces. As a result, the last year became a record for these platforms both in terms of turnover and growth in the number of sellers.

In 2020, the volume of e-commerce in Kazakhstan amounted to 596 billion tenge. The e-commerce sector is expected to continue its impressive growth in 2021, and according to some forecasts, this volume could reach 1 trillion tenge by 2022. Yet in Kazakhstan, the prevalence of e-commerce is still not high enough. There are many untapped opportunities, especially for small and medium sized enterprises (SMEs). The adoption of e-commerce is often slowed down by the lack of knowledge of sellers and manufacturers about the existence of platforms and how to utilize them. In these conditions, SMEs need assistance. The government program for development of Kazakhstan's trade has also identified the need for training to increase the competence of entrepreneurs for participation in e-commerce.

In Kazakhstan today, conditions are ripe for development of a cashless economy; we see great interest and practical steps being taken by both business and government to introduce modern digital technologies. 79% of the population has access to the Internet, 9.5 million people use social networks, and there is a high level of distribution of smartphones and laptops. The country has adopted a *Digital Kazakhstan* government program aimed at developing a digital ecosystem to increase the economy's competitiveness, boost living standards, digitize trade and support sustainable future growth.

As a global technology company and international payment system, we see Mastercard playing an important role in the digitalization of the economy. With Mastercard's rich international expertise, latest technologies and innovations, and strong partnerships, we believe Mastercard projects in Kazakhstan will contribute towards the successful implementation of these goals.

Mastercard strongly believes that supporting SMEs at scale requires a holistic approach with close coordination across the ecosystem of partners, especially in today's environment. As part of this approach, Mastercard signed a Memorandum of Understanding with Kazakhstan's Ministry of Trade and Integration. This strategic partnership provides for joint work with the public sector and key players of the ecosystem to stimulate the digitalization of SMEs and the development of entrepreneurship in Kazakhstan through a series of initiatives in the following key areas: *increasing digital and financial literacy of SMEs, enabling their access to electronic payments and e-commerce tools, supporting the setup of digital payment infrastructure and supporting startup acceleration programs for Kazakhstani entrepreneurs.* Our efforts align with Mastercard's global commitment to help SMEs *"Get Paid, Get Capital, and Get Digital"*.

Some projects within the framework of this cooperation are already being implemented and have been received with great interest. For example, in the area of *Digital Education and Literacy*, Mastercard together with our partners launched a series of monthly e-commerce webinars for Kazakhstani SMEs. Since April, more than 200 SMEs have benefited from these webinars, each covering relevant topics such as *"Advertising and Digital Promotion"*, *"From Business to Electronic Business"*, *"Electronic Payments"*.

In partnership with the *AIFC Fintech Hub*, we will also be launching *SmartDuken*, a platform that helps entrepreneurs create, develop and scale their online business. The platform will focus on providing free support and assistance to SMEs, as well as business acceleration for SMEs who want to drive digital transformation and scale their business to new markets. The purpose of the platform is to conduct a practical way of digitalizing business from start to finish, together with the participation of international partners, and train SME participants to work online.

Within the framework of cooperation, the possibility of using suitable payment technologies for the digitalization of SMEs in Kazakhstan will be studied, including solution areas such as *Card on File*, *Payment Gateway*, *Acceptance and Trade*.

To support *Start-up* and *Fintech Acceleration*, Mastercard participated in the jury of the *Startup Weekend Central Asia-2021* series of competitions. Mastercard, together with the *AIFC Fintech Hub* and the *Internet Initiatives Development Fund* (Russia), also announced the launch of the first fintech accelerator for banks in Kazakhstan in July 2021 at the *Astana Finance Days* conference.

Of course, partnerships are instrumental to our efforts. Mastercard is grateful for the collaboration and support of *the Ministry of Trade and Integration*, *the DAMU Entrepreneurship Development Fund*, *the AIFC Fintech Hub*, *the United States Agency for International Development (USAID)'s Future Growth Initiative*, *the MOST* business incubator, *Yandex Direct*, *Ecwid*, *Robokassa* and various others for their partnership in this journey.

Mastercard looks forward to continuing its work with government and industry on the digitalization of payment systems in order to improve convenience for citizens and businesses, increase transparency, and support inclusive economic growth in Kazakhstan.We are pleased to cooperate with Kazakhstan's Ministry of Trade and Integration as government bodies play a crucial role in the process of supporting the ecosystem. We are confident that our joint efforts will benefit the economy of Kazakhstan and the entire society.





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SME GOVERNANCE: SOLUTIONS FOR GROWTH AND SUSTAINABILITY

by Adalyat Abdumanapova,
Team Lead, ESG Advisory Officer
International Finance Corporation (IFC)

Entrepreneurship, business management, and leadership have emerged as some of the most popular and demanding fields in recent times, accounting for jobs, innovation, and economic growth. Yet, small and medium businesses (*SME*s) tend to experience a higher rate of failure, especially during their early stages. Kazakhstan is no exception. While the reasons may vary, it can essentially be attributed to the *inability of business to grow into governance*.

In a broader sense, governance presents a framework of issues that all businesses and investors usually have to deal with, even if unknowingly. For example, a business may not have a risk management policy, but this does not mean that the business owner is not aware of these issues or has not thought them through.

Also, a business may not have a formal matrix of authorities in its earlier stages, but the owner may distribute authority among key managers and have a clear understanding of who is responsible for what. Governance, therefore, is not a new or supplementary concept. It is what business owners do anyway. The question, however, is if they do it systemically and efficiently.

For the purpose of this publication, it is important to define governance, which is about structures and processes by which companies are directed and controlled. Essentially, good corporate governance helps companies operate more efficiently, mitigate various internal and external risks, safeguard against mismanagement, and improve access to capital.

Good governance is therefore vital for the growth and sustainability of organizations irrespective of their type and size. However, it is important to make a clear distinction between *governance* and *management*, which is often confused.

Governance refers to oversight and decision making related to strategic direction. In other words, it is about *setting a tone from the top*.

Management, on the other hand, refers to routine decisions and administrative work related to the company's day-to-day operation. Management decisions should support and implement goals and values defined by governing bodies (for example, shareholders and board of directors).

A fundamental shift in the overall approach is essential for SMEs to benefit from good governance. They need to grow into governance organically by offering solutions that are fit for purpose as the company evolves from start-up to a mature business.

While there is no "one-size-fits-all" solution, we do not have enough research and guidance on SME governance. To address this gap, IFC developed the *IFC Governance Methodology for SMEs*, a growth-oriented governance model, which tailors governance recommendations to evolutionary stages of SME growth. An effective tool for entrepreneurs around the world, it helps to align processes and procedures to organize and introduce oversight mechanisms, succession planning, internal controls, and governance of family businesses.

The *IFC Governance Methodology for SMEs* identifies the following four common stages or states, which emerge along with a company's evolution:

Stage 1: Start-Up. At this stage, product/service development and market testing are immediate priorities for SMEs. They usually thrive under the founder's individualistic leadership. Resources are stretched with little time for organizational development. A "small and informal" style works well until scaling operations and sales growth become essential.

Defining Factors/ Parameters	Stage 1 START-UP	Stage 2 ACTIVE GROWTH	Stage 3 ORGANIZATIONAL DEVELOPMENT	Stage 4 BUSINESS EXPANSION
Size* (# of employees)	Small (e.g., <50)	Small to Medium (e.g., 50–75)	Medium (e.g., 76–150)	Medium Growing (e.g., 151–250)
Enterprise Focus	Developing products, testing the market	Sales and growth, increasing variety of products, creating client base	Optimizing own structure/processes after growth	Further growth, supported by improved internal organization and processes

Four Stages of SME Evolution

Stage 2: Active Growth. At this point, the need for growth through sales and people along with increasing complexity become a business's defining features. The growth remains largely "organic" and unplanned, which works until it reaches its limit. This is when systemic organizational development becomes a necessity.

Stage 3: Organizational Development. Once the organization grows in size and complexity, it is essential to rectify the imbalances and develop the organization through specialization, professional policies, structures, and staff. At this stage, the focus is on the company.

Stage 4: Business Expansion. Additional capital is often needed to take the organization to the next level. When this capital comes in the form of equity, an increase in the number of shareholders requires more formality in terms of corporate governance. The company's governance takes on the characteristics of "classic corporate governance," including a board of directors.

The proposed stages of SME development help companies develop stage-specific coherence of good practices across the range of governance topics: (i) culture and commitment to good governance; (ii) decision making and strategic oversight; (iii) risk governance and internal controls; (iv) disclosure and transparency, and (v) ownership.

These five topics draw on the *IFC Corporate Governance Framework*, which is based on the *OECD Corporate Governance Principles*. Therefore, SMEs working with the *IFC SME Governance Methodology* will be able to naturally graduate into "corporate" governance as they become large companies.

Conclusion

On a concluding note, to succeed, SME leaders need to be aware of the evolutionary lifecycle of a business while identifying the challenges and solutions associated with each stage. Governance is a long and constant journey, and the sooner businesses start embedding good practices, the more resilient and sustainable they become along the way, which in these turbulent times is relevant as never before.



CHILD RIGHTS: PROTECTION AND SUPPORT FOR THE MOST VULNERABLE

by Arthur van Diesen
UNICEF Representative in Kazakhstan

Child Rights – High on the Agenda of the Government of Kazakhstan

The Government of Kazakhstan has shown strong commitment to the realization of child rights since the early days of its emergence as an independent state. In fact, the *Convention on the Rights of the Child* was one of the first international treaties independent Kazakhstan signed in 1994. Child rights have remained high on Government's agenda ever since. This was confirmed once more in President Tokayev's *Address to the Nation* of September 2020, which set several priorities related to education and child protection in particular.

Since Independence, Kazakhstan has seen tremendous progress for children. To highlight just two achievements: infant and under-five mortality rates have dropped dramatically. And virtually all children have access to education and complete a full course of schooling. But the realization of child rights is an ongoing journey. In Kazakhstan, there are three types of child rights issues: longstanding problems in child well-being that have not yet been resolved fully; newly emerging challenges; and inequities that cause some categories of children to be at risk of being left behind.

Among the longstanding and unresolved issues is the high rate of children in institutional care in Kazakhstan. An example of the new challenges that are emerging is that of overweight and obesity, which affects a rapidly growing proportion of children. Also, the digital divide has become highly relevant for children during the COVID-19 pandemic, as remote learning became the norm during most of the 2020-2021 academic year. And as children spend more time online, digital safety is a newly emerging topic of concern.



The COVID-19 pandemic has had a severe impact on children throughout the world, including in Kazakhstan. This has further added to the challenges children face. Inequalities remain stark in Kazakhstan and manifest themselves in the realization of child rights too. Children with disabilities, children living in remote rural areas, children in institutions and migrating children are amongst the ones most likely to be left behind.

In line with priorities set out by the President in his *Address to the Nation*, this article highlights key issues in education and child protection.



Education

Even before COVID-19 struck, all was not well in the education sector in Kazakhstan. While access to a complete course of education is now almost universal for children in Kazakhstan, there were considerable concerns around quality and inclusivity. One measure of the quality of education is the comparison of learning achievements of children in Kazakhstan with those in other countries. In international assessments such as PISA, Kazakhstan scores significantly lower on learning achievements than OECD countries, despite the considerable investment the country makes through the education budget.

The World Bank estimates that almost two-thirds of students in Kazakhstan were 'functionally illiterate' even before COVID-19. This means that they can read and write, list the capitals of the world or key historical facts, but are not able to apply their knowledge and skills in a real life setting to flourish and function professionally. This links to the fact that pupils in Kazakhstan do not have sufficient opportunity to develop transferrable skills - problem solving, negotiation, managing emotions, empathy, communication, and resilience in the face of adversity.

When UNICEF speaks to employers in Kazakhstan, we often hear complaints that young labor market entrants lack skills particularly in this area. Inclusivity of education, particularly for children with disabilities,

is also an area of concern. While infrastructure has been adjusted in many schools to ease physical access for children with disabilities, further improvements are needed in pedagogical methods and capacity of teachers to provide a conducive learning environment in which children of different abilities can thrive. The recently adopted law on inclusive education will help in addressing these gaps.



COVID-19 was an unprecedented challenge for education systems throughout the world. A rapid transition to remote learning highlighted that even in Kazakhstan, a country that prides itself on its advances in digitization, the last mile connectivity gap is a real problem for schools as well as learners. Many learners struggled due to a lack of connectivity or connectivity at low speeds. The availability of sufficient devices at household level was another issue. The rapid transition to remote learning highlighted weaknesses in digital skills amongst teachers, parents and learners alike.

It also became clear that Kazakhstan's multitude of digital learning platforms needs curation and standardization, as well as a review from the perspective of inclusivity. It is by now an accepted fact that after more than a year of remote learning for the majority of students, significant learning losses have occurred. UNICEF is activating for a full re-opening of schools at the beginning of the new academic year, a rapid and thorough assessment of learning loss and individual support plans for learners who have experienced the most significant learning loss.

UNICEF works with the Government of Kazakhstan to address challenges in the education sector on different fronts. The GIGA initiative is aimed at ensuring every school in Kazakhstan is connected to broadband internet and every learner to meaningful digital learning. Blended education, combining online and offline engagement, will increasingly be a reality in children's learning journey.

UNICEF is working to ensure that blended learning is also inclusive, which means adopting digital learning assets to be accessible to children with disabilities and boosting the capacity of teachers to deliver remote, learner-centered education for children with disabilities and special learning needs. When it comes to skills, UNICEF is working with young people to boost skills for learning, employability and decent work through the Samgau digital platform. UNICEF also is putting emphasis on greater involvement of girls in *Science, Technology, Engineering and Mathematics (STEM)*.



The UniSat Project

Child Protection

The protection of children against violence, abuse, neglect and abject poverty is another priority for Government. UNICEF estimates that before COVID-19, in 2019, about 12% of children in Kazakhstan lived in low-income families. Projections show that the secondary impact of the pandemic has pushed many more children into poverty – by as much as twenty percentage points. Even by the most optimistic scenario, UNICEF does not expect poverty levels amongst children to recover to below pre-pandemic rates until after 2022. This stark finding demands a strong and concerted social protection response.

Violence against children is unfortunately still a reality for children around the world, including in Kazakhstan. Violence against children occurs in the family, at school, in institutions and in public spaces. In our most recent research, three quarters of parents and caregivers in Kazakhstan report using violent disciplining as part of children's upbringing. A positive development is that since 2016, the percentage of parents reporting the use of physical violence has dropped by half. But psychological violence remains as widespread as before. Further work is needed to address the social norms that condone violent means of upbringing.

Another priority topic in the child protection sphere is the relatively high number of children who live in residential institutions of various types. Despite progress made, over 50,000 children live in institutions, giving Kazakhstan the highest rate of institutional care in Europe and Central Asia. This is in spite of the fact that we know that children thrive

best in a family environment. Accelerated action is required to ensure families receive adequate support in order to prevent institutionalization.

For children already in institutions, pathways need to be defined for them to integrate into a family environment through joining their biological family, fostering or adoption. This allows a reprofiling of existing institutions to work more as resource centres for children and families in need of support.

UNICEF is working with Government on all these aspects of child protection. We are closely engaged with the *Ministry of Labor and Social Protection* on social protection reform and the development of a new *Social Code*. We are providing technical support to Government in the development of a new *Child Wellbeing Index*, which will provide Government with a tool to track the status of children at disaggregated level. The evidence will inform policy and budgetary decisions to address outstanding child rights issues.

In addition, we focus on the strengthening of the social workforce, given that social work is a critical profession in terms of identifying child rights violations and ensuring a well-coordinated, multi-sectoral response to children and families in need. With regards to preventing and responding to violence against children, UNICEF is strongly engaged in communications work to address social norms underpinning violence and strengthening mechanisms to identify and respond to violence. It is critical also to strengthen the skills of parents and caregivers in non-violent, positive parenting. One particular kind of violence, bullying at school, is addressed by UNICEF's '*BeKind*' volunteering program.

Shared Value Partnerships with the Private Sector

UNICEF and businesses in Kazakhstan have a common agenda when it comes to child rights. Businesses need a workforce that is sufficiently educated, skilled, healthy and well-nourished. They need customers that are sufficiently affluent to afford the goods and services they offer. And they need a social environment that is harmonious. The protection of child rights ultimately contributes to stronger human capital, which is central to all of the above and defines our common interest.

UNICEF is actively seeking stronger collaboration with businesses in Kazakhstan to find innovative solutions at scale for children. Not as an act of charity, but because investment in children is smart economics for all of us.

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MEMBER NEWS



Visa Appoints Cristina Doros Vice-President and Country Manager for Central Asia and Azerbaijan

Cristina Doros is Vice-President and Country Manager for Central Asia and Azerbaijan based in Almaty. Leveraging her 20+ years of experience in retail banking, information technology, cards and mobile payments, she joined Visa in 2016 to lead the regional Core Products team. Since 2019 she has been Acting Vice-President, Head of Solutions, Visa CISSEE and Country Manager for the Caucasus. Prior to her current role with Visa, she was Deputy CEO and Board Member of a leading Moldovan bank.

Cristina Doros is one of the CISSEE representatives in the CEMEA Women's Leadership Network and Key Lead of regional diversity initiatives.

She holds a Master's Degree in Economics from the IEDC-Bled School of Business, Slovenia.





Dias Kazbekuly Appointed Kazakhstan Country Leader for Dow Chemical

Dias Kazbekuly joined Dow in 2017 as one of twelve people across Europe, Middle East, and Asia region to participate in the Commercial Development Program (CDP) based in Horgen, Switzerland. In this one-year long intensive program, he learned Marketing, Sales, and Finance essentials as well valuable soft skills. He also gained hands-on experience applying these skills in regional and global projects.

After graduating from the Dow Leadership Program, he joined the Dow Industrial Solutions Commercial Team for Europe, the Middle East, and Asia.In this role, he was responsible for commercial activities in Central Asia, developing a commercial strategy, building a sales pipeline, and developing new business opportunities for over ten different market segments, including Oil & Gas, Mining, Agriculture, and other segments.

In 2021, Dias Kazbekuly assumed the additional role of Kazakhstan Country Leader based in Nur-Sultan. He graduated from the University of Texas at Austin with degrees in Chemical Engineering and Government.





Americana Group Appoints Sheldon Williams General Manager in Kazakhstan

Americana is pleased to announce the appointment of Sheldon Williams to the position of General Manager of the Americana Group in Kazakhstan as of November 2020. With over 15 years of experience in the QSR industry, prior to his appointment in Kazakhstan Sheldon was based in the Americana Restaurants Division HQ and has held roles in both the Pizza Hut and Home Delivery verticals of the business. His strong background in operations and leadership capabilities are contributing to Kazakhstan's growth agenda to be fully realized in the market.

In 2017 he was part of Domino Pizza's largest global market conversion when they entered the South Africa market and acquired the then-franchise business. Sheldon spent 2 years with Domino's local corporate partner during their launch phase before moving to Dubai to join Americana Group in 2019. Sheldon Williams completed his BSc Degree in Agriculture in South Africa.

About Americana Group

Americana Restaurant Division owns exclusive franchise rights for the management and the operations of over 1800 restaurants that represent of some of the world's leading food and beverage outlets in 13 markets across the Middle East, North Africa, and Kazakhstan. Americana Brands operating under include KFC, Hardee's, Costa Coffee and Pizza Hut, all of which are present in the Kazakhstan market.



Philips Appoints Alexander Madrakhimov Country Manager for Kazakhstan and Central Asia

Alexander Madrakhimov has represented Philips Health Systems as CIS Business Development Manager since March 2021 , a role that will now be combined with his new leadership role as Philips Country Manager for Kazakhstan and Central Asia. He began his career as Sales Manager in the Radiology, Intensive Care, and Neonatology Department for Medtekhnika. Following this, he continued his career as Equipment Advisor at Alcon, and for the last seven years he served as Account Manager for Uzbekistan, Tajikistan, Azerbaijan, Turkmenistan, and Kyrgyzstan at GE Healthcare.

Alexander Madrakhimov graduated from Tomsk State University of Control Systems and Radioelectronics in 2010 as specialist in electronic security systems and complex solutions.



MEMBER NEWS



Oleksandr Malovanyi Appointed General Manager of Abbott

Oleksandr Malovanyi joined Abbott as Business Unit Head in Ukraine in 2013, was promoted to Sales Director in 2015, and in 2017 relocated to Minsk to serve as Country Manager for Belarus, Georgia, Armenia, and Azerbaijan. In his current appointment as Abbott General Manager, he is responsible for managing business in Kazakhstan, Kyrgyzstan, Georgia, Armenia, and Mongolia. He has successfully built organizations in the countries for which he is responsible and has consistently demonstrated strong growth year-on-year.

Oleksandr Malovanyi graduated from National Pirogov Memorial Medical University and holds a Master's Degree in Medicine from the Ukrainian Military Medical Academy. He comments on his new appointment: "I'm really excited to join a great team and lead business in such a fast-growing and diverse region with a bright future. I strongly believe in this regions and its future!".



Boris Karassev Appointed Country Manager of Quehenberger Logistics Kazakhstan

Boris Karassev began his career in logistics at DHL, where he worked for eleven years, advancing to leadership roles in service departments and the foreign transport department. After DHL he worked for Pony Express, DPD, Spark Logistics, EMS, JPOST / JMART, and Post Express, serving as Chief Operating Officer for the past five years.

His COO responsibilities have included those of Sales Director. In his new position as Country Manager for Quehenberger in Kazakhstan, a company with its head office near Salzburg in Austria, he looks forward to achieving excellent results and maintaining high European standards in the company's operations in Central Asia.

Boris Karassev graduated from the Civil Aviation Academy in 2003.







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ADVOCACY UPDATE
MAY – JULY 2021

The final session of the *AmCham-Prime Minister's Council to Improve the Investment Climate* before the July – August summer break was held on 18 June 2021. The Council will resume in the autumn. The June Council topic was *Alternative Energy – The Path to the Future*, a complex and challenging topic, given Kazakhstan's status as a leading global oil and gas producer.

Kazakhstan has long relied on its oilfields for its economic affluence, which has ensured its leadership in Central Asia and has given it aspirations to occupy an equal place among the developed nations of Western Europe, the Middle East, and Asia-Pacific. However, Kazakhstan has fallen behind the curve compared to these regions of the world, where renewable energy has been vigorously developed.

There is clearly no intention to replace oil and gas, which will continue to be needed in parallel for the world's many energy needs, but Kazakhstan has become aware that attention must also be paid to alternative models for the future. This is also part of the general economic diversification agenda that forms a major part of the Government's economic recovery plan. However, it remains to be seen to what degree diversification and alternative energy will develop with the recent increase in oil prices.

The June Council Speaker List featured a high-profile list of speakers from diverse agencies, institutions, and companies:

- *IEA Deputy Director General Mary Warlick*
- *UK COP 26 Ambassador David Moran*
- *Chevron Fellow and Energy Transition Team Head Arthur Lee*

- *GE International President for Russia and the CIS Bela Ferenczi*
- *EBRD Kazakhstan Director Agris Preimanis*
- *Morgan Lewis Managing Partner Aset Shyngyssov*

The Council opened with presentations by the three Council Ambassadors.

U.S. Ambassador William Moser noted President Biden's immediate action following his inauguration in January to bring the United States back into the Paris Agreement and recommit to combat the negative impact of climate change. He stressed that U.S. companies have a great deal to offer in the areas of wind power, solar power, nuclear power, efficient natural gas power, carbon capture and sequestration, smart grids, and energy efficiency.

However, these companies need a strong signal from Kazakhstan's Government signaling the country's strategic plans for its power generation sector. And, like all investors, they need a fair playing field, including a just tax policy, predictable government regulation, and rule of law.

Canadian Ambassador Nicholas Brousseau stressed Canada's readiness to assist Kazakhstan in this area and outlined the Canadian approach to climate change, which has recently devastated western Canada and presents serious challenges for the future. He mentioned the opportunities for job growth offered by the development of new forms of energy and reminded the Council of the cooperation between Canada and Kazakhstan in the nuclear field, still an active undertaking between Cameco, Inkai, and Kazatomprom.

Netherlands Ambassador Andre Carstens, speaking on behalf of *EU Ambassador Carlsson*, outlined the EU's proactive approach to climate change with a renewable energy target of 32% by 2030, aiming to achieve Greenhouse Gas Emission reductions by at least minus 55% by this date.

The EU will soon undertake a number of new initiatives under the *'fit for 55'-package,* of which energy efficiency is a key part. Opportunities also exist for cooperation in offshore wind and green hydrogen, and experience may be shared in offsetting the coal phase-out.



UK COP26 Ambassador David Moran, whose presentation was particularly timely, spoke about the *COP26 (COP – UN Council on Climate Change) Glasgow Summit's goal*, requiring support from every country and across society to keep the planet's temperature under control, including through carbon emission targets of net zero by 2050, with robust long-term strategies and delivery plans. To achieve this goal, the global transition to clean power needs to happen at least four times faster than at present.

Countries will have to accelerate their phase-out of coal, encourage investment in renewable energy, limit deforestation, and speed up the switch to electric vehicles.

Arthur Lee, Chevron Fellow and Energy Transition Team member, has attended all of the COP meetings over many years. He was thus in a position to provide an overview of the COP progress over nearly three decades to achieve its goals and to support alternative energy to offset the rapid and damaging progress of climate change. He also very concisely stated Chevron's goals for energy transition:

- T*o reduce Chevron emissions intensity cost efficiently – oil, gas, methane, flaring*
- *To increase renewables to support Chevron operations and business*
- *To invest in potentially breakthrough technologies*



The *International Energy Agency (IEA)* has long represented the oil industry and is the foremost global speaker on oil and gas after OPEC. *IEA Deputy Director General Mary Warlick* referred to Covid-19 and its impact on the global energy system. Her presentation stressed that energy diversification in the future is essential, although this does not preclude continuing oil and gas requirements. Oil and gas will continue to be part of the global energy mix.

The IEA has produced scenarios for the transitions needed in the energy sector to meet long-term global goals. The recent IEA report, *Net Zero by 2050: A Roadmap for the Global Energy Sector,* presents a detailed pathway to achieve net-zero emissions globally by 2050.

The *IEA* expressed its interest in expanding its relationship with Kazakhstan. Although the IEA currently has several projects and contacts with Kazakhstan, Ambassador Warlick expressed her wish to open up discussions with Kazakhstan and asked for AmCham's support in realizing this goal.

Bela Ferenczi, GE International President for Russia and the CIS, outlined GE's activity in developing renewable energy infrastructure. Speaking from the global perspective and in terms of Kazakhstan's future, he pointed out that the global energy transition will be built on a blend of highly efficient gas power with zero carbon renewable energy, harnessed by advanced grid and digital solutions.

He stressed Kazakhstan's immense potential in renewable energy, particularly in wind power. The Government has committed to emissions reduction, carbon neutrality, and an ambitious 15% increase in the share of renewables in the energy mix by 2030. GE has partnered with Eni to build *Badamsha Wind Farm* and is ready to deepen its collaboration based on GE expertise and the world's most advanced wind turbines.

Beyond the potential of renewable energy, coal-to-gas switching is key for reducing harmful emissions and enhancing generation efficiency. GE has helped the US energy sector decarbonize power generation by 33% since 2007 and is ready to provide its leading gas power technologies to support coal-to-gas switching in Kazakhstan. In the next decade, hydrogen energy will also play a major role in the sustainable development of the energy sector. GE's gas turbines can already be powered using a hydrogen blend of 50% to 80% with a pathway to 100% by 2030.

EBRD Country Director Agris Preimanis spoke about Kazakhstan's mechanisms to achieve its obligations under the Paris Agreement to which it is a signatory, as well as ways to achieve the 15% target of renewable energy generation by 2030, including projects to strengthen electricity networks, installation of flexible capacities, and energy storage. Kazakhstan has also set itself the ambitious target of achieving carbon neutrality by 2060.

The EBRD has, over many years, displayed strong leadership in supporting and funding RES in Kazakhstan, and has won a number of AmCham awards for their successful encouragement and development of alternative forms of energy in many regions of the country.

Morgan Lewis Managing Partner Aset Shyngyssov reviewed the development of Kazakhstan's RES legislation since 2009 and outlined legislative changes needed to facilitate introduction of new renewable energy projects. He stressed that investors expect more flexible terms for renewables investment and will respond with investment when they see the Government undertake supportive legislation.

AMCHAM WORKING GROUP UPDATES MAY – JULY 2021

Technology and Innovation Working Group 25 May 2021 (1)

On May 25, *Almaty Technology and Innovation Working Group* members met online chaired by *Sergey Leschenko*, the new *Microsoft Country Manager*. The topic was *Skills Development for Technology and Innovation in Kazakhstan*, presented by *Dr. Renate Strazdina, Digital Advisory Lead, Microsoft Central/ Eastern Europe* and *Alexander Grevtsev, IT Director, Kazakhmys*.

In the new digital environment it is necessary to be up- to-date with the digital reality. Digital skills have 4 divisions: *Digital Citizen, Digital Collaborator, Digital Innovator, Digital Creator*, each requiring special skills: *Device and Internet Literacy; Information and Media Literacy; Day-to-day Digital Content, Networks and Systems; Data Analysis and Visualization; Digital Design; Implementation and Digital Management, Networks*, and *Platforms*.

To conclude, the speakers recommended to begin developing digital skills by mixing theoretical knowledge with practical experience by engaging experts and different kinds of interactivities (Workshops, Q&A sessions, Community).



Technology and Innovation Working Group 29 June 2021 (2)

On June 29, *Almaty Technology and Innovation Working Group* members met online chaired by *Sergey Leschenko, Microsoft Country Manager*. The invited Speaker was *Evgeniy Andreychuk, Head of Sales, Microsoft Solutions in the EE and CA countries, ACM Specialist, Softline Kazakhstan*. The agenda was *A Hybrid Technology for Global Cloud Technologies Under Kazakhstan's Regulatory Requirements*.

The presentation started with introduction of *Softline*, its functionality and products. Softline is a global service company that helps businesses and governments implement digital transformation. *Microsoft 365* is a software product that combines a set of web services distributed on a subscription basis under the *"software + services"* scheme. Microsoft 365 helps users in the sphere of work with data, personal productivity, corporate culture, work with documents, communications, and automatization. This product includes applications such as: *Power BI, Microsoft Teams, Access, One Drive, Outlook, Publisher,* and *Power Apps*.

These technologies enable the transition to new, effective teamwork. A new approach to work provides remote and mobile workplaces, chatting, data exchange via the cloud, reliable information in real time, flat organization, AI and Machine Learning Security. Benefits include adaptation of employees to work remotely, improving quality and efficiency of communications and meetings, leveraging Microsoft 365 services, increasing security and protection of corporate data, the positive attitude of employees to innovations, and readiness for changes.



Almaty/ Nur-Sultan Foreign Investment Working Group, 26 May 2021

On May 26, the *Almaty/Nur-Sultan Foreign Investment Working Group* met online chaired by *Juan Carlos Escobar, Managing Director for Philip Morris International in Kazakhstan & Central Asia*. The agenda was *Amendments to the Personal Data Protection Law*. The purpose was to gather key issues for a letter to the Digitalization Ministry. PMI shared a comparison table of the amendments and a final version was given to the Chairman to determine further action.



Taxation Working Group Report
(Almaty, Nur-Sultan, Atyrau, Aktau)
18 June 2021

On June 18, a joint meeting of the *Combined Tax Working Group* in Nur-Sultan, Almaty, Atyrau and Aktau met online chaired by *Anthony Mahon, Cross-Border Tax Partner, O&G Leader at Deloitte*. The agenda was: *1) Update on the WHT dividend, 2) Horizontal Monitoring, 3) Overview of a new Type of Investment Agreement*. Invited speakers were *Deloitte Manager Karina Kalimzhanova* and *Morgan Lewis Associate Karina Ilyussizova*.

The meeting started with a discussion of exemption of dividends and its changes introduced on 1 January 2021. The new interpretation contains provisions that apply only to income previously taxed with corporate income tax. This new provision causes many issues that hit the business community and companies, including suspension of appeals and initiative of tax audits.

AmCham and the FIC have requested a solution from the Prime Minister. As a result, a special working group has been established and a letter has gone to the General Prosecutor, who has handed the issue on to the Advisory Council.

At the end of the meeting, Karina Ilyussizova delivered a presentation on the new form of investment agreements. The parties to the agreement are Kazakhstan's government and the investor (including the AIFC) requiring 1) an investment of at least US$ 50 mln. and 2) priority operations approved by the Government.

Benefits include: a contract without a rigid, standard form; flexibility of contractual terms; additional provisions (waivers, indemnities); foreign law jurisdiction/arbitration; stability / exclusions / indemnities.

The criteria to receive tax preferences are: a signed IA; the investment project complies with government-approved operations; the investor cannot be a subsoil user and/or engage in production of excisable goods; and the investor cannot apply special tax regimes.



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