

**Deloitte.**

**Legal Alert**

**We are where your  
business is**

Tax & Legal  
July, 2015



## Draft law to amend migration and employment legislation

As part of the President's "100 Concrete Steps to Five Institutional Reforms" Plan, the government has started revising migration regulations with respect to engaging highly qualified overseas specialists.

The draft document will revise:

- the procedure for employers to hire foreign nationals. Plans are in place to charge different rates for work permits. The base rate will equal costs to train a specialist in the technical and vocational training system per year, i.e. KZT 360,000. The rate and cost will be adjusted depending on the sector and the category of foreign specialist to be hired. In sectors where there is a good number of local specialists, the cost of permits will be higher. Permits for individuals in which Kazakhstan, as a country, has an interest, the rate will be lower
- the permit procedure for foreign nationals coming to Kazakhstan independently for work purposes. Plans involve replacing the current permit system with a certificate of compliance with qualification levels, such as education, competence, work experience and others. Foreign nationals whose profession is listed as being of great benefit to priority sectors of the economy will be given permission to work in Kazakhstan. At the same time, under the new rules, foreign nationals will need to find a job within three months, otherwise they will have to leave the country

In addition, to ensure national legislation is in line with World Trade Organisation treaties, amendments will be made to Kazakhstan staff content. The percentage of foreign specialist and workers will be increased to 50%, while restrictions on category one overseas employees (senior and middle management) will be removed (previously the restriction was 30%).

Plans also include transferring the role of issuing permits to Public Service Centres, which cuts out the corruption element.

**The draft law is currently under review with the Mazhilis.**

## Law № 339-V dated 22 July 2015 *On the Ratification of an Investment Incentive and Protection Treaty between Kazakhstan and Japan*

The above Treaty was signed to develop and promote economic interaction and international dialogue on developing international regulations for investing in each other's countries.

Both countries commit to offering investors from the other country conditions no less favourable than it would offer its own investors under similar circumstances. The two countries also commit to taking appropriate measures to further improve the investment climate by looking to reduce or eliminate restrictions existing as at the Treaty date for investors from the other country.

**The treaty has not yet entered into force.**

## Order of the Minister for Investment and Development № 411 dated 31 March 2015 *On the Approval of Rules for returning a Contract Territory (Section)*

Contract territories (or sections) are returned in accordance with contracts once those contracts are no longer valid or have been recognised as invalid.

When returning a contract territory, the subsoil user should take actions to abandon or close subsoil use facilities in accordance with article 111 of the Subsoil and Subsoil Use Law.

Furthermore, all subsoil user production facilities and land plots should be returned in a condition that does not pose a threat to public life and health and to the environment.

After completion subsoil activities in a contract territory (section), the subsoil user should file a report on all subsoil use operations with the relevant regional division of the authorised body within one month.

**The Rules entered into force on 10 August 2015.**

## **Ministry of Investment and Development Order № 385 dated 31 March 2015 On the Approval of Rules for the Use of State-Owned Geological Data for Educational, Scientific and Commercial Purposes and the Export of Geological Data to outside the Republic of Kazakhstan**

Geological data is provided for use by the authorised body for subsoil study and use and includes two core types of data: primary (material information, and hard copy and electronic information) and secondary, which is generated as a result of the processing, interpretation, analysis and collation of primary data. Geological data containing state secrets is not provided for use.

Geological data takes the form of a package of geological, mining, technological and other information that is provided in return for a fee based on a standard confidentiality agreement. Geological data may be provided free of charge for state purposes and at the expense of the state budget.

Geological data is provided once subsoil user rights have been granted after a tender or direct negotiations, and within 10 working days of paying the required charge for it. Any historical costs remaining after geological data has been paid for are refunded once mineral resources production has started in accordance with Kazakhstan law.

Geological data may be removed from Kazakhstan to other Customs Union countries or to outside based on licenses issued by the relevant Customs Union country authority. The Rules also stipulate a list of documents to be filed to receive permission to export geological data, including an application. They also provide filing deadlines and consideration periods for any such applications.

**The Rules entered into force from 7 August 2015.**

## **Law № 333-V dated 17 July 2015 On the Introduction of Amendments and Additions to Legislative Acts to improve the Protection of Ownership Rights, guarantee the Protection of Contractual Liabilities and introduce stricter Liability for Offences**

The Law introduces amendments and additions to the following legislative acts to improve the protection of ownership rights, guarantee the protection of contractual liabilities and introduce stricter liability for offences:

- the Civil Code (General Part)
- the Civil Code (Special Part)
- the Banking Law
- the Real Estate Mortgages Law
- the Law dated 23 October 2008 introducing amendments and additions to legislative acts concerning financial stability

Some of the more significant amendments include the additions to the General Part of the Civil Code where a violation of an obligation secured by a pledge is treated as extremely insignificant and the value of the pledge holder's claims as clearly disproportionate to the value of the property in question if the following conditions are met simultaneously:

- 1) the value of the outstanding obligation (net of fines and interest) is less than 10% of the value of the pledged property as determined by the parties in the relevant pledge agreement
- 2) the obligation secured by a pledge has been outstanding for less than three months

**The Law entered into force on 1 August 2015.**

## Resolution of the Board of the National Bank № 92 dated 27 May 2015 On Approval of Rules for the Application of Correction Factors

The Rules establish a procedure for applying correction factors to insurance premiums on employers' obligatory employee accident insurance.

For example, if an insurance case arises through the fault of the insured entity, then the insurance premium due in accordance with the Obligatory Insurance Law is multiplied by a correction factor based on the average annual number of employees injured in the five years preceding the date obligatory insurance was taken out, and the total number of insured employees as at the date an obligatory insurance agreement was concluded. Likewise, any calculation of the number of injured employees should take into consideration the number of insurance cases that arose through the fault of the insured entity, drawn up in an accident report in accordance with the Labour Code, and that resulted in the employee losing between 30% and 100% of their ability to work, or even his or her death.

If the insured entity has a branch(es) whose operations differ from those of the insured entity, then the correction factor takes into account the average annual number of all employees injured and the total number of employees of the employer and its branch(es).

**The Rules entered into force from 29 July 2015.**

## Law №257-V dated 28 November 2014 On the Introduction of Amendments and Additions to Certain Legislative Acts regarding Taxation

The Law introduces amendments and additions to the following legislative acts:

- 1) the Criminal Executive Code
- 2) the Budget Code
- 3) the Tax Code
- 4) the Banking Law
- 5) the Anti-Corruption Law

The most important additions to the Tax Code are as follows:

- 1) **Rejection of voluntary value added tax registration** (article 569)

If a company chief executive officer or individual entrepreneur are foreign nationals or stateless individuals, and if their purpose for being in Kazakhstan is not work related, or if their period of stay in the country has expired, the tax authorities will reject their voluntary registration for value added tax purposes

- 2) **Deregistration for value added tax purposes** (article 571)

Taxpayers may now be deregistered for value added tax purposes without notification if:

- they failed to enter data in a VAT return on sales turnover and goods, work and services purchased for two consecutive tax periods
- during the calendar year in which they were registered, turnover failed to reach the minimum of 30,000 times the monthly calculation index
- the chief executive officer / sole founder (partner) of a legal entity / individual entrepreneur is an inactive legal entity/individual entrepreneur, chief executive officer or sole founder (partner) of an inactive legal entity; an incompetent or partially incompetent, missing, deceased (declared dead) individual; an individual with an outstanding criminal record under articles 192, 192-1, 216 and 222 of the Criminal Code, are on the wanted list, and also are foreign nationals or stateless individuals whose purpose for being in Kazakhstan is not work related, or if their period of stay in the country has expired.

**The above provisions of the Law entered into force on 1 July 2015.**

**Law № 343-V dated 2 August 2015 On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding Actions to combat the Legalisation of Income (Money-Laundering) received illegally, and the Financing of Terrorism**

The Law introduces amendments and additions to the following legislative acts:

- 6) the Civil Code (General Part)
- 7) the Criminal Code
- 8) the Administrative Violations Code
- 9) the Law *On the State Registration of Legal Entities and the Registration of Branches and Representative Offices*
- 10) the Banking Law
- 11) the Notary Law
- 12) the Financial Lease Law
- 13) the Non-Commercial Organisations Law
- 14) the Law *On Actions to combat the Legalisation of Income (Money-Laundering) received illegally, and the Financing of Terrorism*
- 15) other laws

The most important amendments were made to the Law *On Actions to combat the Legalisation of Income (Money-Laundering) received illegally, and the Financing of Terrorism*, to include the following in a list of entities subject to financial monitoring:

- entities carrying out leasing activities as a lessor without a license
- pawnbrokers
- entities performing operations with precious metals and precious stones, jewellery and jewellery items made from them
- entities providing intermediary services during the purchase and sale of real estate
- payment machine operators

Additions to the Law include:

- the introduction of a mechanism to freeze the assets of individuals and organisations linked to the financing of terrorism and extremism so as to prevent the financing of terrorism
- the introduction of a mechanism providing access to frozen assets to allow entities included in a list of organisations and individuals linked to the financing of terrorism and extremism to fund their basic needs

**The Law enters into force from 16 August 2015, apart from specific provisions.**

# Контакты

## Алматы/Астана

**Владимир Кононенко**

Тел.: +7(727) 258 13 40

Факс: +7(727) 258 13 41

Email: [ykononenko@deloitte.kz](mailto:ykononenko@deloitte.kz)

**Агайша Ибрашева**

Тел.: +7(727) 258 13 40

Факс: +7(727) 258 13 41

Email: [aibrasheva@deloitte.kz](mailto:aibrasheva@deloitte.kz)

## Атырау/Ақтау

**Энтони Махон**

Тел.: +7(727) 258 13 40

Факс: +7(727) 258 13 41

Email: [anmahon@deloitte.kz](mailto:anmahon@deloitte.kz)

## **About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms. Please see <http://www2.deloitte.com/kz/en/legal/deloitte-kazakhstan.html> for a detailed description of the legal structure of Deloitte, Kazakhstan.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte’s more than 210,000 professionals are committed to becoming the standard of excellence.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.