

# ClientAlert

## Corporate Law

January 2014

### Law on the National Chamber of Entrepreneurs

On 22 July 2013, the Law of the Republic of Kazakhstan “On the National Chamber of Entrepreneurs of the Republic of Kazakhstan” dated 4 July 2013 took effect (the “**National Chamber Law**”).

Pursuant to the National Chamber Law, on 29 August 2013 the Government of the Republic of Kazakhstan and the Association of Legal Entities “National Economic Chamber of Kazakhstan “Atameken Union” (“Atameken”) established a National Business Chamber (the “National Chamber”) (Republic of Kazakhstan Government Resolution No. 897 dated 29 August 2013).

The National Chamber Law affects the interests of all commercial legal entities and individual entrepreneurs in Kazakhstan as membership in the National Chamber is compulsory for them.

#### Overview of Key Provisions

The key provisions of the National Chamber Law include the following:

- **Founders.** The founders of the National Chamber are the Government of Kazakhstan and Atameken. The Government of Kazakhstan is to cease to be a founder and participant upon the expiry of five years from the moment of establishment, i.e., no later than 30 August 2018.
- **Status.** The National Chamber is a non-profit self-regulated organization acting as a union of those engaged in business (i.e., commercial legal entities and individual entrepreneurs).
- **Purpose.** The National Chamber is established to assure favorable legal, economic and social conditions for business initiatives and to promote a mutually beneficial partnership between the business community and Kazakhstan government authorities, as well as to promote and support the operation of associations of individual entrepreneurs and legal entities.
- **Governing Bodies.** The governing bodies of the National Chamber are the Congress (supreme body), the Presidium (governing body), the Management Board (executive body), which deals with daily operations, and the Audit Commission (financial supervisory body).

The Presidium is chaired by Timur Askarovich Kulibaev and the Management Board by Ablai Isabekovich Myrzahmetov.



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- **Compulsory Membership.** Membership in the National Chamber is compulsory for everyone engaged in business, i.e., for all commercial legal entities and individual entrepreneurs registered or recorded in Kazakhstan. Membership is not compulsory for: (a) legal entities that, under Kazakhstan law, are subject to compulsory membership in other non-profit organizations (such as chambers of appraisers, professional organizations of auditors, etc.) and (b) state owned enterprises.
- **Civic Monitoring.** The National Chamber engages in civic monitoring, i.e., collects, systematizes and collates information, including evaluating the degree of resolution of the problems and tasks posed by a specific regulatory act and its impact on the business situation in the Republic of Kazakhstan.
- **“Business Climate” Rating.** The National Chamber is to regularly prepare an independent “Business Climate” rating.

We believe that the “Business Climate” rating will be our national counterpart of international business activity ratings, such as the “Doing Business” rating of the World Bank. The latter is based on a combined analysis of regulatory acts governing business activities and generally available statistical data on business regulations.

Similarly to the “Business Climate” rating, the Russian Federation also uses a similar process where the Russian Union of Industrialists and Entrepreneurs annually produces a report on the state of the national business environment.
- **Annual report on the state of business activity.** The National Chamber is to prepare an annual report to the head of state on the condition of business activity. The report is to assess the performance results of the central and local government executive authorities based on the results of a publicly available analysis of the regulatory impact of statutory legal acts and instruments of regulation and an analysis of the established law enforcement practice. The “Business Climate” rating will also form part of the report.
- **Recommendations on business governance.** The National Chamber is entitled to draft and submit proposals to the Kazakhstan Government on the step-by-step delegation to the business community of certain business regulation functions. However, this will not affect the operation of financial organizations.
- **Establishment of an arbitration court and arbitration tribunal at the National Chamber.** The National Chamber may also establish local arbitration courts (treteyskie sudi) and international commercial arbitration tribunals in accordance with the Republic of Kazakhstan Laws “On Arbitration Courts” and “On International Commercial Arbitration.”

At present, there are a number of local arbitration courts (treteyskie sudi) and international commercial arbitration tribunals operating in Kazakhstan that consider disputes not only under the laws of the Republic of Kazakhstan, but also in accordance with the legal standards of applicable law chosen by the parties to the proceedings.

The procedures for the consideration of disputes by local arbitration courts (treteyskie sudi) and international commercial arbitration tribunals are virtually identical. Their jurisdictional separation is based on the residence of the parties to a dispute: disputes between Kazakhstan residents are considered in local arbitration courts (treteyskie sudi), while disputes involving parties at least one of which is not a resident of Kazakhstan are considered by international commercial arbitration tribunals.
- **Other functions of the National Chamber.** From 12 July 2014, the National Chamber will be entitled to: (a) issue certificates of origin (in the manner laid down by the Government of Kazakhstan), (b) conduct an independent expert analysis of goods (except for an expert evaluation of the proof of the country of origin) and (c) prove force majeure under the terms of foreign trade transactions and international treaties of Kazakhstan.

## Mandatory membership dues

All members of the National Chamber are to pay annual membership dues by 31 December of each year.

The payment procedure and the caps on membership dues are determined by the Government of Kazakhstan depending on the volume of aggregate annual income. For example, the cap on membership dues is:

- 160 MCI (approximately US\$2000 in 2014) for members with an aggregate annual income for the calendar year preceding the reporting calendar year from 60,000 to 1,500,000 MCI; and
- 4,400 MCI (approximately US\$52,500 in 2014) for members with an aggregate annual income exceeding 1,500,000 MCI.

The congress of the National Chamber is to approve the rate of membership dues (except for the 2014 membership dues in amounts approved by the Presidium), publish it in the mass media, including the website of the National Chamber, and present bills for payment no later than 1 July of each year.

Membership dues will be tax-deductible.

## Exemption from payment of membership dues

The National Chamber Law exempts members with an aggregate annual income not exceeding 60,000 MCI from the payment of membership dues until 22 July 2018. Thereafter, a decision on exemption from payment will be made by the Congress of the National Chamber.

## Chamber of Commerce and Industry

From 12 July 2014, due to the enactment of the National Chamber Law, the Republic of Kazakhstan Law "On Chambers of Commerce and Industry" will cease to have effect. By that date, the Chambers of Commerce and Industry of the Republic of Kazakhstan and the territorial chambers of commerce and industry are to be liquidated.

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