

Higher growth: lower risk

The top 10 risks: Kazakhstan

Key risks for inbound investments
Written with Colibri Law Firm

The top 10 risks

1. Sudden changes in regulation
2. Unclear legislation
3. Bribery and corruption
4. Red tape
5. Enforcing legal rights
6. Protectionist policies
7. Unclear tax legislation
8. Increased environmental legislation
9. Fluctuating exchange rates
10. Labour laws

1. Sudden changes in regulation

As a foreign investor, your legal status can change continually, as can your rights and properties. The government can implement new policies for economic or political reasons. It can introduce:

- environmental controls;
- controls to develop oil fields, including restrictions on production; and
- drilling obligations or other sector specific obligations.

It can also expropriate or cancel contract rights and intervene on price, taxes, royalties and exported goods. Any new regulation, or change to existing regulation, will also likely affect your costs and the way in which you conduct your business.

2. Unclear legislation

Kazakhstan's regulatory system is inconsistent and contradictory. The government is still developing laws for transfer pricing, local content, foreign investment, subsoil use, licensing, corporate, tax, customs, currency, banking and anti-monopoly.

The laws are also subject to different interpretations, but not complying with the rules or responding to changes in the law could affect your investments. Contracts and other agreements can be revised or terminated, so carefully monitor any changes in law or practices in your sectors.

3. Bribery and corruption

You may encounter corruption in Kazakhstan as it is widespread in areas such as property, customs, construction and land registration. There are unofficial business inspections, long delays, bribery in customs clearing processes and government employees can take unofficial control of companies.

The president acknowledges corruption in the lower levels of government. The country adopted an anti-corruption policy in 2009 and Kazakhstan's anti-corruption agency (Financial Police) planned measures to target corruption at all levels. Because of this, corruption has slightly decreased recently, but it remains a highly relevant issue and the progress of the agency is not clear.

4. Red tape

Administrative barriers can hinder your everyday business and create financial losses. Red tape is especially evident for licensing applications, which take a long time to complete. Your connections with local officials are beneficial to speed up the paperwork.

The government has tried to slash red tape and lower administrative barriers by introducing changes to the licensing/permits regime and the single window approach with easy public access. As a result, the permit regime is in a constant state of change and must be monitored to ensure there are no unforeseen delays in paperwork. It has reduced the number of permits you need to run a business in Kazakhstan by around a third, but transparency in the laws still create a problem in ensuring you follow the proper processes and deal with red tape and administrative barriers in a timely manner.

5. Enforcing legal rights

A foreign investor can be subject to the exclusive jurisdiction of the Kazakhstan courts, so you might not be able to enforce your rights. The legal concepts differ from those established in common law jurisdictions, for example corruption and prejudice still exist to a certain extent.

The enforcement procedures of Kazakh courts remains immature. The Kazakh executive branch does not often recognise or enforce foreign court rulings as the courts tend to reconsider cases on their merits, especially when high-value Kazakh-based assets are involved. These judgments are only enforced in Kazakhstan if there is an international treaty between Kazakhstan and the country whose courts rendered the judgment. Kazakhstan is a signatory to many multinational treaties including the New York Convention. However in practice this does not always help the party to enforce a decision, as mentioned previously, the courts tend to reconsider the decision based on the merits.

6. Protectionist policies

The government enforces local content policies to promote Kazakhstan's goods and services. So subsoil users and state companies have to abide by local content reporting requirements. Inconsistencies can mean fines and penalties. Pursuant to the local content requirements the subsoil users are required to employ local personnel and enterprises to perform work and services for subsoil use. The requirement also spreads to the use of materials and products produced in Kazakhstan if they comply with the standards and other requirements. In some cases, subsoil users and national companies may have to award a tender to the bidder with the highest local content percentage, which can be a disadvantage.

7. Unclear tax legislation

Kazakhstan's tax laws are unclear, inconsistent and continually evolving. For instance, there were several recent amendments to the tax code, including VAT, income tax, subsoil users' tax and tax reporting.

Changes to tax legislation and the tax authorities' practice could negatively affect your business. You could also face a risk of excessive tax or penalties. For instance, constant changes in tax legislation and the absence of a stable tax regime have recently affected subsoil users. In the absence of a tax stability regime a subsoil user undertakes to pay taxes and other mandatory payments to the budget pursuant to the laws as applicable at the time obligations of payment thereof arise.

8. Increased environmental legislation

Kazakhstan is applying stricter standards for environmental laws, meaning larger fines and increased liabilities, which could lead to potentially higher capital and operating costs. Not complying with these laws can mean injunctions, damages, suspension or revocation of licenses, penalties and potentially the termination of contracts, which has been seen in the subsoil industry.

As new environmental laws come into force, how they are interpreted and applied may become inconsistent and more stringent, so you could incur substantial costs.

9. Fluctuating exchange rates

The Kazakhstan tenge can rise or depreciate dramatically against the dollar, or could even stop being freely exchangeable into dollars.

If there is a threat to Kazakhstan's economic security and financial stability, the president can change the currency regulation and apply a 'special permission regime'. Restrictions on foreign currency deals and repatriating foreign currency or capital could also affect your business.

10. Labour laws

Not complying with labour regulations can lead to administrative or civil liability. The labour legislation is very strict and protects the employee, thus it has to be observed very carefully. Certain redundancies may be regarded as unfair dismissal if the strict labour procedures are not complied with.

Your success can depend on your ability to attract and keep highly skilled and technical personnel. Competition is intense, especially in subsoil industries, and you might not attract and retain these people locally, or get the work permits to hire qualified expatriates. This could seriously harm your business and operations.

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