

INTRODUCTION TO THE LAW OF KAZAKHSTAN

EDITED BY
ZHENIS KEMBAYEV



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List of Abbreviations

Art.	Article
BIT	Bilateral Investment Treaty
CC	Civil Code
CIS	Commonwealth of Independent States
CIT	Corporate Income Tax
CLJS	Constitution Law on the Judicial System and the Status of Judges
CPC	Civil Procedure Code
CrC	Criminal Code
CrPC	Criminal Procedure Code
CRK	Constitution of the Republic of Kazakhstan of August 30, 1995
CU	Customs Union
C.Sc.	Candidate of Science
D.Sc.	Doctor of Science
ENU	L.N. Gumilev Eurasian National University
ENT	Unitary National Test
EU	European Union
EurAsEC	Eurasian Economic Community
GSW	Goods, Services and Works
ICSID	International Centre for Settlement of Investment Disputes
JSC	Joint-Stock Company
KazGU	S.M. Kirov Kazakh State University
KazGYuA	Kazakh State Juridical Academy
KazGYuU	Kazakh Humanitarian-Juridical University
KazNU	Al-Farabi Kazakh National University
KazSSR	Kazakh Soviet Socialist Republic
KIMEP	Kazakhstan Inst. of Management, Economics and Strategic Research

List of Abbreviations

KZT	Kazakhstan Tenge
LBP	Law on Business Partnerships
LC	Labor Code
LdC	Land Code
LoC	Law on Concessions
LI	Law on Investment
LIT	Law on International Treaties of the Republic of Kazakhstan
LLP	Limited Liability Partnership
LMF	Law on Marriage and Family
LNCO	Law on Non-commercial Organizations
LNLA	Law on Normative Legal Acts
LPE	Law on Private Entrepreneurship
LSEZ	Law on Special Economic Zones
LSP	Law on State Property
LSS	Law on State Service
MOG	Ministry of Oil and Gas
MCI	Monthly Calculation Index*
MINT	Ministry of Industry and New Technology
NASRK	National Academy of Sciences of the Republic of Kazakhstan
NU	Nazarbayev University
OECD	Organisation for Economic Cooperation and Development
PIT	Personal Income Tax
PSA	Product Sharing Agreement
RK	Republic of Kazakhstan
RSFSR	Russian Soviet Federative Socialist Republic
SEZ	Special Economic Zone
SUL	Law on Subsoil and Subsoil Use
TsiK	Central Executive Committee of the Congress of Soviets
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
US	United States of America
USD	United States Dollar
USSR	Union of Soviet Socialist Republics
VAT	Value Added Tax
WTO	World Trade Organization

*A monthly calculation index (MCI) is a scale used in Kazakhstan for expressing the monetary value, calculating social payments and also incrementing fines. It is set annually by the Law of RK “On Republic Budget”. As of 2011, one MCI is equal to KZT 1,512 (Kazakhstan Tenge) or about USD 10. This index’s amount changes periodically (usually upwards and usually in January of every year).

Foreword

The contributors of this book set out to write a review of the legal system of Kazakhstan, an independent country with enormous potential to grow in stature on the world's stage. We believe they have clearly succeeded in this effort. In the following pages, you will find a concise but complete review and analysis of many major branches of Kazakhstani law, with a critical eye towards not just the letter and spirit of the law, but also how it is enforced in everyday life.

Such a work is especially critical at this moment in time. The ninth largest country in the world in terms of territory, Kazakhstan is a truly Eurasian country constituting a bridge between Europe and Asia. It borders Russia in the north, and this boundary is the longest continuous land frontier in the world. Kazakhstan's eastern neighbor China is becoming a global superpower, while to the south Turkmenistan, Uzbekistan and Kyrgyzstan—whose titular ethnic groups all share a Turkic heritage with the Kazakhs—present both challenges for security and stability, and opportunities for increasing integration and commerce.

Once an important transit point on the Silk Road, the territory now known as Kazakhstan found itself a part of the Hun, Mongolian, Turkic, Russian and Soviet Empires at various times in its history. The independent state that now controls this essential area at the center of Eurasia still finds itself at the crossroads of social and economic, cultural and ideological relations between the East and West, and so it is unsurprising that the country is multi-confessional, with Islam and Orthodox Christianity being the two most popular religions, and essentially bilingual, with Kazakh considered the state language but Russian used “on equal grounds” in all state institutions.

Due to its pro-business legal environment and abundant natural resources—it is one of the biggest exporters of oil, gas, uranium and many other minerals in the world—it is now a major recipient of foreign direct investment, with more and more transnational corporations opening branches in the country. And Kazakhstan is becoming an increasingly important actor on the world stage, holding the chairmanship of OSCE in 2010 and often serving as the regional leader in Central Asia.

The country's legal system has also undergone an incredible rate of change in the last 20 years. From the Russian Revolution in 1917 until gaining independence on December 16, 1991 the republic was an integral part of the Soviet Union, and thus was a country with socialist ideology and a state-managed economy. However, after obtaining its independence, Kazakhstan committed itself to the principles of a democratic and rule-of-law state based on a market economy. Since that point, Kazakhstan has embarked on a path of political transformation and economic development while trying to create its own unique identity by uniting more than 100 different ethnic and religious groups. Scholars wishing to study legal systems during times of transition can find few better subjects.

This book's value resides in helping the reader to learn not only about the historical facts of Kazakhstani law but, most importantly, about the existing legal system of this Eurasian country. The readership intended for this book may range from those who know nothing about the law of Kazakhstan to those who are legal experts. A unique aspect of this book is that it is one of the first attempts to provide insight into the legal history of Kazakhstan and guide readers through the historical development of the Kazakh statehood. Furthermore, the book is invaluable to those who are interested in specific areas of the Kazakhstani legal system, such as, *inter alia*, Constitutional Law, Administrative Law, Civil Law, Family Law, Criminal Law, Criminal and Civil Procedure, etc. Each of these subjects is covered by an independent, unbiased expert in the field, who endeavored to share their thoughts on the implications of legal rules and read between the lines so as to clarify the ambiguities of the law. Together, the authors fill an indispensable need for a systematic and comprehensive account of Kazakhstani law, and do so in an eminently readable fashion.

But what truly differentiates this book from the substantial scholarship already undertaken with respect to the law and legal system of Kazakhstan is the fact that it is written and published in English. It is the perfect opportunity for English-speaking readers, be they in Kazakhstan, the Netherlands or anywhere else, to be introduced to Kazakhstan—its historical facts, cultural peculiarities and, most importantly, its law. Given that English is one of the most commonly spoken languages in the world, the book transcends cultural and geographical borders to enable audiences from very different backgrounds to plunge into the study of Kazakhstani law.

Kazakhstan now stands at a crucial moment as it attempts to complete its transition to the market system, diversify its economy and maintain ethnic harmony. This book is your guide through these complicated and fascinating transformations, full of clear writing and profound insights. Whether you are just discovering this engaging area of law or are looking for an easy way to review what you already know, We think you will find this book extremely useful and rewarding.

Terence Blackburn
Dean of KIMEP School of Law
(2010–2011)

Kiel Ireland
American Graduate student at KIMEP

Preface of the General Editors

This book is intended to provide a concise introduction to the law Kazakhstan and to highlight its distinctive features. It is the first book on Kazakh law in English and it is especially important today when Kazakhstan is increasingly gaining importance on the international arena. We hope that the book will serve the needs of law students, practitioners and scholars, who are interested in studying the legal system of Kazakhstan.

Prof. Dr. Tugrul Ansay, M.C.L., LL.M. (Columbia),
Founding dean of the Law School, Koç University
Prof. Don Wallace, Jr LL.B. (Harvard), Chairman,
International Law Institute, Washington D.C.

Preface and Acknowledgments

This book is the first-ever comprehensive overview of the legal system of Kazakhstan in English. The need for such book has become apparent in recent decades, with Kazakhstan taking an important place in the international community and playing an ever-growing role in international relations, consequently attracting increasing attention throughout the world.

The main purpose of the book is to provide an introduction to the most important areas of the law of Kazakhstan for all interested readers, be they academics, practitioners, government officials or students. While it is impossible to cover all aspects of Kazakhstani law, which is (like any other legal system in the world) extremely complex and highly dynamic, the book aspires to offer its readership a compact, coherent, systematic and reliable overview of the major legal concepts, principles and developments of the legal system of Kazakhstan.

Each chapter of the book covers a major area of law summarizing the leading doctrines and/or analyzing current and developing trends in that particular field. After initial accounts introducing the legal history of Kazakhstan, the basic features of its legal system and the Kazakhstani legal education system, the book comprises a number of specific topics of public and private law, including substantive and procedural law. In addition, each contribution provides a bibliography referring the reader to the most important publications for more detailed reading.

It is evident that the main beneficiaries of this book (like the entire series of introductory books to different legal systems) will be scholars and students of comparative law and practitioners and government officials dealing with Kazakhstan. Additionally, the book is intended to serve as a text for the students who take the Introduction to the Law of Kazakhstan course at KIMEP-University in Almaty, and will be the first volume – among many planned – to be published by the newly established KIMEP School of Law.

According to the editorial policy of the book series, each chapter was contributed by a different expert in the concerned sphere. Although such a

collaborative approach unavoidably compromises uniformity of style and structure, it certainly enhances the expertise and scholarship of the book by allowing the involved professionals to express their views and visions. Consequently, the contents of the various chapters were left to the discretion of their authors, who determined the substance of, and took responsibility for, their contributions according to their own best judgment.

Many chapters were contributed by professors teaching at the KIMEP School of Law and were written in English (although some required substantial editorial work), while others were translated from Russian into English. Attempts were made to make the contributions consistent with each other at least structurally and to conform the style and the legal terminology to the American usage.¹

This preface cannot be complete without an expression of well-deserved recognitions and acknowledgments. With deep gratitude I would like to thank all the authors for their outstanding efforts, their creative contribution and their patience with editorial interference. My special thanks go to my research assistant Kiel Ireland, an American graduate student at KIMEP, who thoroughly reviewed each chapter to ensure that the language was clear and coherent. Also, this book could not have come to fruition without the generous support of Professor Tugrul Ansay, a co-editor of the book series in which the book has been published. Moreover, I would like to thank KIMEP President Dr. Chang-Young Bang, without whom KIMEP would not exist, and my colleagues throughout my university, who have always supported me in this and other endeavors. Furthermore, I am very grateful to German Academic Exchange Service and the Alexander von Humboldt Foundation, which provided me a very gracious support throughout my academic career. Finally, I must mention my colleagues John Burke, Joseph Luke and Vladimir Tyutyurikov, who contributed their time and expertise to improving several chapters of this book.

Zhenis Kembayev
Almaty, Kazakhstan
October 2011

1. Some legal terms are provided with their translations (in Chapter 1 only in Kazakh; thereafter in Kazakh and in Russian). Translations are given in singular; the first version is Kazakh, the second Russian. If only one translation is given, that translation is identical for both Kazakh and Russian.

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