

Kazakhstan on the cusp of change



As Kazakhstan prepares to diversify its economy, it has turned its eyes to Singapore. Lawyers from Central Asia and Singapore weigh in with *Espie Angelica A. de Leon*.

On December 15, 2012, more than 20 years after Kazakhstan achieved full independence on December 16 1991, President Nursultan Nazarbayev delivered his State of the Nation address.

In his speech, he presented the Kazakhstan 2050 Strategy.

His roadmap for the country's development leading up to the year 2050 bears his vision of

Kazakhstan joining the league of 30 most-developed countries. The Kazakhstan 2050 Strategy aims to achieve this through economic, social and political reforms throughout the country.

Among the strategy's top 10 projects are the construction of nuclear power plants; provision of more funding for science; and development of mobile and multimedia, nano- and space technologies, robotics and gene engineering, among others.

All these dovetail with current positive developments in the country's intellectual property scene. Companies in Kazakhstan are increasingly becoming aware of the importance of IP in their business and the economy.

"Trading is a prevailing business in Kazakhstan," says Saule Akhmetova, partner and branch director at GRATA Law Firm in Almaty. "Therefore, companies apply for their registration and protection more often. Besides, trademarks account for majority of disputes."

IP legislation is in place, including Part 5 of the Civil Code of the Republic of Kazakhstan devoted to IP matters and laws on Copyright and Related Rights; Protection of Selection Achievements; Trademarks, Service Marks and Appellations of Origin of Goods; Protection of Topographies of Integrated Circuits; and the Patent Law of the Republic of Kazakhstan.

"One popular route for obtaining patent protection in the territory of the Republic of Kazakhstan has been using the Eurasian Patent Organization and to file a Eurasian patent application with the Eurasian Patent Office, which is an independent regional organization headquartered in Moscow," says Erik Viik, a patent attorney at Papula-Nevinpat in Helsinki.

"The Eurasian route enables a right owner to obtain patent protection in any of the eight Eurasian member states by filing a single Eurasian patent application. The member states are Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Turkmenistan," says Viik, whose firm offers IP services in all former Soviet Union states, including Kazakhstan.

The Civil Proceedings Code and administrative and criminal laws also support IP protection and aid

in the enforcement of court rulings.

Furthermore, the country has ratified most international treaties on IP protection.

Despite these, however, the volume of patent registrations in Kazakhstan remains low.

"This is primarily due to the fact that Kazakhstan is a raw material economy and scientific developments and inventions that could develop patent law are insignificant," says Akhmetova. "Kazakhstan's economy is built on the commodity market, and most patents are registered in the energy and industrial sectors. At this stage, development in the fields of pharmaceuticals, mechanical engineering and digital technology is required for Kazakhstan. However, Kazakhstan needs to improve its legislation in the field of patent law as patents require enhanced protection of rights."

There may still be some problem areas as far as IP is concerned in Kazakhstan, but this is poised to change in the coming years. Plus, on top of the huge strides the country has taken after achieving full independence in 1991, bigger changes are yet to come.

On September 9, 2019, the Intellectual Property Office of Singapore (IPOS) signed a tripartite memorandum of understanding with the Astana Financial Services Authority (AFSA) and the Ministry of Justice (MoJ) of Kazakhstan. The MoJ is the government agency in charge of IP policy.

The MoU provides a framework for cooperation that will strengthen innovation activities within the Astana International Financial Centre (AIFC) and help build its IP ecosystem.

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AIFC, which was launched in July 2018, is a territory situated in Kazakhstan's capital Nur-Sultan (which had been known as Astana until March 2019). It is a designated investment hub for insurance, banking, Islamic financing, financial technology, e-commerce, and other innovation projects for the financial sector.

"AIFC is the financial hub for the Central Asian countries as well as the republics of the Trans-Caucasian region, Middle Eastern countries, the territory of west China and Mongolia, and European countries," says Modangul Tagbergenova, a Kazakh patent and trademark attorney and Eurasian patent attorney at Papula-Nevinpat in Almaty.

"The main goal of AIFC is development of human resources and training of local specialists in financial market, facilitation of public access to international professional certification, creation of skilled personnel reserve at international level for AIFC ecosystem and beyond. In addition, AIFC develops its own tailor-made programs to train specialists related to AIFC's core areas of activity, delivers professional events to improve financial and investment literacy," says Tagbergenova.

According to Akhmetova, business entities inside the centre are entitled to certain privileges. Among these are: free choice of the currency used

in contracts; tax exemptions from corporate and individual income tax, property tax and land tax, as provided by the legislation; and visa-free entry for 30 days for some foreigners and work permit-free entry for some expatriates.

AFSA regulates the services and activities within the AIFC. "AFSA has powers to authorize, supervise, and, where necessary, carry out enforcement with regard to centre participants," says Akhmetova.

Business activities in AIFC are also governed by the Constitutional Law on AIFC, statutory acts of AIFC and the Kazakhstani law, particularly those parts which do not contradict with AIFC statutory acts, according to Akhmetova.

The terms of the MoU include the establishment of an IP and innovation service centre within the AIFC. Through this facility, IPOS will provide its services and share its IP expertise with business entities operating within the AIFC.

Provision of IP management consultancy services and customized training programs will also be jointly explored.

According to Walter Chia, acting director for IPOS' international engagement department, the cooperation is aligned with IPOS' IP Hub Masterplan, which aims to create a more vibrant and inter-

connected global IP ecosystem. The MoU with AFSA and MoJ is just one among more than 70 IP-related agreements the IPOS has inked with various nations and organizations. These account for nearly 90 percent of global trade.

“Innovation and digitalization have changed what is valuable in today’s economy,” says Chia. “There is an increasing need for enterprises to leverage their IP and intangible assets strategically to scale and grow. This is not unique to Singapore and we see this happening around the world. On this, we are glad to have found like-minded partners in the Astana Financial Services Authority and the Kazakhstan Ministry of Justice with a common goal to use IP and innovation to drive high-value economic growth in our countries.”

With the establishment of an IP and innovation service centre in a hub such as the AIFC, Jian Ming Chang, a patent attorney and associate principal at Rodyk IP in Singapore, is optimistic.

“There will likely be work opportunities for Singaporeans. Singapore will also establish business networks with Kazakhstan which will promote business activities between the two nations,” he says.

As a patent attorney, Chang says he looks forward to opportunities to work for Kazakhstan companies venturing into Singapore, the Kazakhstan government, Singapore government, and Singapore companies venturing into Kazakhstan.

For Ren Jun Lim, a partner at Baker McKenzie Wong & Leow in Singapore, the MoU is a good move toward raising Singapore’s profile in Kazakhstan, which is trying to establish itself as a gateway to Central Asia.

Says Lim: “Traditionally, we do not see much work from Central Asian countries in Singapore. Hopefully, with the MoU and the various bilateral treaties, there will be an increase in investments into Singapore from Kazakhstan. With such an increase in investment, there will be a corollary growth in the demand for legal services such as IP to secure the rights of the investing / expanding companies.

“With IPOS and potentially other Singapore IP firms contributing their expertise to developing the IP ecosystem in AIFC, this will be a good showcase of Singapore’s strength in IP. This aligns with Singapore’s plan to become an IP Hub. Given IPOS’ input, it is imagined that the IP ecosystem will be largely similar to Singapore’s which means that Kazakhstan companies and other Central Asian companies with a presence in Kazakhstan will become familiar and comfortable with Singapore’s IP system as well.”

Kong Xie Shern, an associate at Baker McKenzie Wong & Leow in Singapore, says the firm is hoping the country will be a leading choice for Kazakhstan businesses once IPOS’ IP Hub Master Plan is implemented. By then, he says, those companies should have familiarized themselves with Singapore’s IP ecosystem and IP expertise.

“For example, one of the strategic outcomes of the Master Plan is for Singapore to become a hub for IP dispute resolution,” says Shern. “With the MoU in place, this will hopefully attract and encourage these companies to choose Singapore as a dispute resolution forum for transactions in the Southeast Asia region or where a neutral venue or forum is desired.”

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Shern adds that the MoU and other treaties such as the bilateral investment treaty signed by Singapore and Kazakhstan in November 2018 came at a most opportune time with Kazakhstan now headed toward economic diversification.

“Kazakhstan’s economy has been traditionally dominated by oil and gas and Kazakhstan’s government has recently launched the Strategy 2050 which we understand is geared toward a diversification of its economy including a push toward developing a knowledge-based economy,” he says. “Naturally, this will result in an increase in the types of industries being developed in Kazakhstan. Generally, with such a diversification, there will be more opportunities for both inbound and outbound investment for companies in both countries. This will also lead to an increase in legal work to support such investments.”

Tagbergenova adds, “The agreement could boost the development of economic relations between Kazakhstan and Singapore. Consolidation and development of financial market as well as creation of favourable environments and new opportunities for commercial organizations and enterprises would also benefit the local economy.”

Akhmetova also says that Kazakhstan will serve as a guarantor for businesses in IP protection.

“Our most important expectation from this agreement is the development of innovative ideas for the management of intellectual property. Bilateral cooperation in the field of investment protection between Kazakhstan and Singapore and cooperation in the areas of financial technology, construction, education, petrochemical, gas and food industries are intensifying. We believe Singapore’s achievements in the field of intellectual property will have a great impact on Kazakhstan’s economy, provide an impetus for innovations and inventions, develop and bring Kazakhstani legislation to international standards,” says Akhmetova.

Chang also believes the MoU will have a positive impact in the entire ASEAN region.

“By reaching out to Kazakhstan in this manner, Singapore is promoting our strength in IP protection. Since Singapore is part of ASEAN, this is good publicity for ASEAN. Other ASEAN countries may, as a result, try to achieve what Singapore has achieved,” says Chang.

Shern thinks otherwise. He mentions that there had been attempts in the past to harmonize the IP ecosystem in the region. But such attempts failed. “As such, the MoU will unlikely have much of a foreseeable impact on the IP ecosystem in general,” he says.

Akhmetova also expresses her own reservations especially with regard to patents.

“As Singapore is an innovative and strong country in the field of new technologies, cooperation with Singapore will help strengthen innovative exchange between the countries,” she explains. “However, one should not expect a quick solution to the problem in the field of patents in Kazakhstan as the development of this area depends on the industrial development of the economy of Kazakhstan.”

Nevertheless, for Chia, it is only timely that efforts are being taken to find ways to strengthen innovation flows between Southeast Asia and Eurasia.

“We hope that such partnerships will increase awareness of new opportunities for IP-intensive enterprises in our respective regions and provide a supportive IP-enabled ecosystem for such enterprises to grow in overseas markets,” he says.

Among Central Asian countries, Kazakhstan is Singapore’s largest trade partner. In 2017, bilateral trade between the two economies reached S\$133.6 million (US\$98 million). Both countries are also part of the Eurasian Union-Singapore Free Trade Agreement, which also covers e-commerce and IP. Talks for the agreement are now ongoing. [AIP](#)

