

# Comparative Analysis of the National Legislation and International Good Practices for Further Development of the Entrepreneurship Code's Provisions

Professor Yarik Kryvoi (team leader)

British Institute of International and Comparative Law

[y.kryvoi@biicl.org](mailto:y.kryvoi@biicl.org)

Roundtable sponsored by the World Bank and organised in cooperation  
with the Ministry of Justice of Kazakhstan in Astana, November 2018

# Introduction

- Need for the project
- Methodology of the project
- The project team
- Structure of each chapter: explanatory note, substantive sections, recent reform initiatives as well as policy options and best practices for consideration

## Selection of jurisdictions for comparison

- Kazakhstan, Canada, Germany, Russia, Singapore, United Kingdom plus international public law
- Common law, civil law and mixed jurisdictions
- Jurisdictions with long established traditions as well as in transition
- Not only law on the books but also practice

# Corporate governance

- Definition and types of corporate agreements
- Law applicable to corporate agreements
- Resolution of deadlock in shareholder disputes
- Liability of corporate officers for their misconduct

# Regulation of holding companies

- Definition of holding companies
- Establishment, reorganisation and dissolution of holding companies, rights and obligations of members of the holding company
- Mechanisms of cost-sharing, distribution of losses and profits between holding companies for tax purposes
- Peculiarities of intra-holding relations as applied to legal regulation of distribution of dividends within parts of the holding and taxation

# Contract law issues

- The principles of good faith and estoppel
- The principle of freedom of contract
- Principles of interpretation of contracts
- Agency and escrow agreements
- Subscriber and option agreements
- Warranties and representations
- Fundamental change of circumstances
- Fault in conclusion of a contract

# Contractual liability

- Composition and proving damages
- Liquidated damages and their relation to penalties
- Indemnity clauses

# Protections of foreign investors

- Criteria of the terms “investor”, “investment”, “investment disputes”, and “investment activities” in national law
- Foreign direct investment screening mechanisms and post-admission controls in national law
- Approaches to regulation of foreign direct investments in international treaties



# Reforming international investment agreements of Kazakhstan

- Criteria of the terms “investor”, “investment”, “investment activities” and “investment disputes” under international law
- Investment disputes related to public law issues and the right to regulate
- Taxation disputes as a special type of regulatory disputes
- Breaches of contractual obligations as breaches of international law
- Disputes arising without any agreement between an investor and the State and their qualification as “investment disputes”
- Investment disputes involving legal entities which are directly or indirectly owned by the state

# Structure of the workshop

- Brief presentations from represented jurisdictions
- Report on proposed regulatory reform
- Moderated discussion.