

KAZAKHSTAN'S CONSTITUTIONAL REFERENDUM

Change within the ruling elite and likely redistribution of assets amid a lack of legitimacy and increasing foreign political risks

20 June 2022

Issues & Sectors	Kazakhstan, Constitutional Referendum, Government Legitimacy, Privatization, Geopolitical Risks, Foreign Investment
Stakeholders	Kassym-Jomart Tokayev, Nursultan Nazarbayev

On 5 June, Kazakhstan held a referendum to amend the country's constitution. With a turnout of over 68%, more than 77% voted in support of the amendments that have led to crucial changes in the country's power structure. 19% voted against the amendments, while international observers have remained largely reserved on this crucial vote.

The approved 56 amendments, which came into force on 8 June, envisage several changes to the country's political system, in favour of President Kassym-Jomart Tokayev. These include amendments to the electoral procedure, presidential, parliamentary and regional powers, the judiciary, the status of former President Nursultan Nazarbayev, general provisions of the Constitution, the resumption of the activities of the Constitutional Court and an official prohibition on the death penalty.

Below, Aretera provides an analysis of this referendum and its implications for foreign investors.

This memo will cover:

Key takeaways from the referendum	2
Overview of key constitutional amendments	3
Implications for foreign investors.....	5

KEY TAKEAWAYS FROM THE REFERENDUM

Likely in the wake of the current geopolitical environment, international observers have remained reserved and neutral towards the referendum. The European Union issued a statement on taking the referendum under advisement and welcomed the political reforms. On behalf of the United Nations, Deputy Secretary General Amina Mohammed spoke in support of the reforms. Monitoring missions from the CIS, CSTO, SCO and other organizations had no significant criticism of the voting procedure, while the OSCE/ODIHR mission uncovered a series of technical shortcomings that do not call the results of the referendum into question.

Crucially, the referendum procedure involved block voting for or against all the proposed amendments; voters were denied any option to support or reject individual proposals.

The referendum was spearheaded by Kazakhstan's incumbent President Kassym-Jomart Tokayev in late April. It was positioned as an instrument for transitioning from a super-presidential state to a presidential state with a strong parliament, and the revised Constitution was posited as a new social contract between the authorities and the people. The number of amendments does not, however, fully reflect the qualitative changes in the state governance system.

The results of the referendum and their subsequent implementation are supposed to reflect changes in Kazakhstan's domestic and foreign political situation, following the events¹ of January 2022 when mass protests and the following intervention by the Collective Security Treaty Organization (CSTO) – primarily Russia – essentially removed a pressure group (led by ex-president Nursultan Nazarbayev) from power.

These events bolstered President Tokayev's standing. Previously, he had been perceived as a political figure with limited independence amid a power transit benefiting Nazarbayev's entourage (clan). Nazarbayev left office in 2019 yet retained a dominant influence on key decision-making (the status of the First President, or Elbasy, and the lifetime right to head Kazakhstan's Security Council). Following the January events, Nazarbayev de facto lost his privileges and the results of the referendum enshrined this development de jure.

The key constitutional amendment stripping Nazarbayev of his special status, as well as related powers and privileges, was "packaged" with other, mostly populist, moves involving the delegation of individual presidential powers to the representative and judicial branches. The amendments are largely superficial: the President retains the key powers, including the right to appoint the Prime Minister and key government ministers and to veto laws.

The amendments do not generally change the power structure, which remains president-centric, or shape a new system of checks and balances. The President and the presidential administration remain the key decision-makers. The constitutional status of state counsellor (previously state secretary) additionally bolsters the executive branch as it increases the importance of the state counsellor and the head of the administration in decision-making.

¹ See here for our overview of the 2022 January unrest in Kazakhstan

At the same time, these constitutional amendments are potentially conducive to a redistribution of property and assets from the Nazarbayev elite, which has lost its influence, to forces loyal to the incumbent authorities. The provision concerning the land and mineral resources belonging to the "people" (in the previous version of the Constitution, they were the property of the state) sets the framework for "de-oligarchization" of both the private and the quasi-public economic sectors, with a new elite loyal to the President likely to benefit from this measure.

The People's Party of Kazakhstan (formerly the Communist Party) led by Ermuhamed Ertisbayev might head up the process. Ertisbayev publicly advocates revising the results of privatization: taking assets back from "oligarchs" (local big business owners) and giving them back to society. In this context, Kazakhstan's disloyal financial and industrial elite might fully or partially lose their assets (primarily the assets of the Samruk Kasyna Fund, which manages important public enterprises), with control likely to be transferred to a new elite.

Early parliamentary elections remain a topic of discussion. The current parliament is due to govern until 2026; the last elections were held in 2020, with deputies being elected for a term of six years. Even so, the current parliament, formed under the influence of ex-president Nazarbayev, is no longer in accord with the new political reality. The referendum eased registration procedures for new parties and lowered the electoral threshold for the lower house (Mazhilis), thereby theoretically making it possible to increase political competition by creating prerequisites for early elections. Yet, the process of building new parties will not be a quick one. The possibility of holding new elections to the Mazhilis has not come up yet but it does remain on the agenda.

Additionally, there are still risks of new upheaval in Kazakhstan, possibly caused by both economic problems and external factors connected with a possible geopolitical exacerbation in Central Asia. Consequently, the process of Kazakhstan's domestic political transformation related to new elites coming into power is likely to be evolutionary rather than revolutionary.

OVERVIEW OF KEY CONSTITUTIONAL AMENDMENTS

As for the intra-elite balance of power, the main amendment to the Constitution is the stripping of Kazakhstan's First President of his special status as national leader. The relevant article will be struck from the Constitution and the provisions of the constitutional law on "The First President of the Republic of Kazakhstan – The Elbasy" will no longer be valid. This law envisaged several privileges (immunity from liability for actions taken after the end of the presidential term, prohibition on detention, search and personal interrogation, inviolability of property and bank accounts of Nursultan Nazarbayev and his family members). Subsequently, Nazarbayev's status will be regulated by standard provisions on ex-presidents, which stipulate the right to the protection of honour and dignity, retirement payments, transport and a security detail.

This innovation further formalizes the process of "purging" the state apparatus of officials loyal to the ex-president's entourage. A personnel audit (including the resignation of and criminal proceedings against Karim Masimov, the former head of the National Security Committee), and an audit of decisions² made by ex-president Nazarbayev, had been happening long before the referendum but have now been further legitimized.

² One stark example of auditing decisions made under Nazarbayev is Kassym-Jomart Tokayev's decision to change Kazakhstan's administrative and territorial structure and to restore three regions previously dissolved by Nazarbayev: the Abai, Jetisu and Ulytau regions.

Many amendments curtail some presidential powers, change the procedure for elections to the Mazhilis, the legislative functions of the upper house of parliament (the Senate), the judicial system and the election of heads of regions and larger cities.

The crucial amendments are listed below:

- The President is not allowed to be a member of any party and the closest relatives of the head of state are prohibited from holding state office and heading publicly owned enterprises:
 - In April 2022, Tokayev withdrew his membership of the Amanat (former Nur Otan) party, which he previously led. Theoretically, this provision lays the foundations for a future parliamentary consensus based on transitioning from a system with a dominant ruling party to a more flexible multi-party system consisting of moderate forces and a controlled opposition. It should be noted, however, that the registration of new parties is moving forward very slowly.
- Judges and justices (including Constitutional Court and Supreme Court justices), chairs and members of the Central Electoral Commission, the Higher Audit Chamber (previously the Accounts Committee for Supervising Budget Performance), military and law enforcement personnel are also prohibited from holding memberships in political parties.
- The President may hold office for a maximum of two consecutive terms:
 - The amendments do not prohibit holding the office of President for more than two terms, but there must be a gap.
- The procedure for elections to the Mazhilis has also been amended:
 - Previously, elections to the Mazhilis were based on proportional representation, with some deputies being elected by the Assembly of People of Kazakhstan (APK). Under the new system, elections to the lower house will be based on a mixed (proportionate representation and plurality voting) system. The APK can no longer send deputies to the parliament. In addition, the number of seats has been cut from 107 to 98.
- The Constitutional Court has been reinstated (it ceased activity in 1995 after a referendum spearheaded by Nursultan Nazarbayev). The renewed Constitutional Court will start operating from 1 January 2023:
 - Reinstating the Constitutional Court is likely another safety catch preventing the mega-concentration of power in the hands of Kazakhstan's incumbent and future presidents, while the court is an arbiter of sorts in intra-elite conflicts.
 - The President is now empowered to appoint (in addition to the heads of the National Security Committee and the National Bank and the Prosecutor General) the chairs of the Higher Judicial Council and the Constitutional Court (with consent from the Senate).
- The Senate is essentially stripped of the lawmaking function: it can only approve or reject bills passed by the Mazhilis. Additionally, even though the public expected heads of regions and large cities (*akims*) to be made elected officials, the President retained influence over these appointments: *maslikhats* (local representatives' authorities) elect *akims* from two candidates proposed by the President:
 - Curtailing the Senate's powers and retaining presidential powers essentially to appoint heads of regions and large cities deliver a major blow to the ambitions of regional elites.

 The Human Rights Ombudsman in Kazakhstan was given constitutional status.

Another innovation worth special attention is the constitutional prohibition on the death penalty. This is largely a formality since Kazakhstan had a moratorium on the death penalty from 2004 to 2020.

IMPLICATIONS FOR FOREIGN INVESTORS

The referendum may have an ambivalent effect on the prospects of foreign investments in Kazakhstan. On the one hand, the amendments are democratic in nature, conducive to political competition and will have a positive effect on the investment climate. On the other, superficial changes in the power structure are likely intended to "disguise" the process of elite replacement and property re-distribution in the post-Nazarbayev era, which carries certain risks for investment.

The constitutional changes come as Kazakhstan has been experiencing a considerable influx of international companies that have left Russia after the invasion of Ukraine, to which the Kazakh government has responded positively, offering direct government support and a range of incentives for businesses.

The upcoming changes overlap with several domestic and foreign political challenges. The former include President Tokayev's lack of legitimacy, having taken office with the backing of the now marginalized former President Nazarbayev. This lack of legitimacy might trigger acute intra-elite conflict amid the property re-distribution and crisis phenomena manifesting in the country's economy.

Foreign political challenges include exacerbating confrontation between the large global (US, China) and regional (Russia³, Turkey) powers. These countries have significant influence on Kazakhstan, while Kazakhstan's standing as Central Asia's largest state triggers all these actors' interests in having a greater influence on domestic politics, which carries significant risks for foreign investors⁴.

###

If you would like to schedule a discussion of this paper, please contact:
Daniyar Koshenov, Co-Director for Kazakhstan & Central Asia at d.koshenov@areterapa.com



Aretera is a leading independent public affairs advisory firm operating across Central & Eastern Europe, Turkey, Ukraine, Central Asia and a growing number of global emerging markets. We advise a wide range of leading multi-national corporations, providing counsel on all aspects of public policy, public affairs and reputation management.

www.areterapa.com

³ See [here](#) for our overview of Russia's war against Ukraine and its impact for Central Asia

⁴ For instance, a potential corporate conflict may threaten the Caspian pipeline consortium which exports about 80% of Kazakhstan-produced oil. Russia [owns](#) a large share in the CPC (31%), as do Russia's private and public oil companies (Lukoil, Rosneft). Kazakhstan owns 21%, while several foreign energy companies (Shell, ENI, Mobil, Chevron, etc., control the rest. A change in the CPC's shareholder balance (acquiring a share) may potentially threaten problems for Kazakhstan's oil exports, whomever this change benefits.