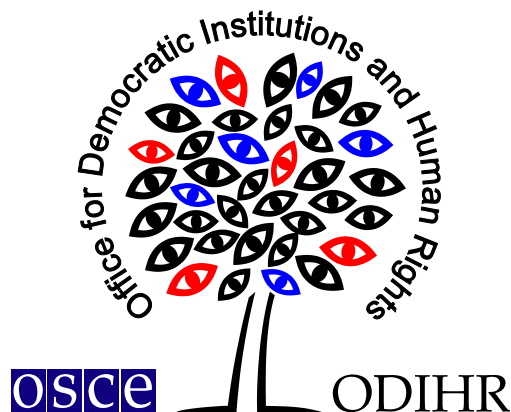


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OPINION

ON THE DRAFT LAW

OF THE REPUBLIC OF KAZAKHSTAN ON

THE PROFESSIONAL ACTIVITIES OF ADVOCATES

AND LEGAL ASSISTANCE

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I. INTRODUCTION

1. *On 18 October 2017, the OSCE Office for Democratic Institutions and Human Rights (hereinafter ‘ODIHR’) received a request from the Ministry of Justice of the Republic of Kazakhstan to review the Draft Law on the Professional Activities of Advocates and Legal Assistance (hereafter ‘the Draft Law’). On 31 October, ODIHR responded to the Ministry of Justice, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Draft Law with OSCE commitments and international human rights and democracy standards.*
2. *On 28-30 November 2017, at the invitation of the Ministry of Justice, ODIHR’s Legal Officer travelled to Astana to meet with the Minister of Justice Mr. Marat Beketayev, members of the drafting team, and representatives of the legal community, including the Republican Bar Association and individual practicing lawyers. These meetings helped ODIHR clarify the policy rationale behind the Draft Law, the drafting process, and key concerns of the legal community. The OSCE Programme Office in Astana provided support in the organization of the visit.*
3. *This Opinion was prepared in response to the above request.*

II. SCOPE OF REVIEW

4. The scope of this Opinion covers only the Draft Law on the Professional Activities of Advocates and Legal Assistance (‘the Draft Law’), in the version it was submitted for review. Thus limited, the Opinion does not constitute a comprehensive review of the entire legal framework for legal services in the Republic of Kazakhstan.
5. The Opinion raises key issues and identifies main areas that would benefit from further consideration. In the interests of conciseness, the Opinion focuses primarily on those provisions that require improvements rather than on the positive aspects of the Draft Law. The ensuing recommendations are based on international standards and practices related to the provision of legal services and the regulation of the legal profession. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. In accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, in the preparation of this Opinion attention was paid to the integration of a gender perspective in the Draft Law.¹
6. In view of the above, ODIHR would like to make mention that this Opinion does not preclude ODIHR from formulating additional written or oral recommendations or comments on the Draft Law or other legislation pertaining to the regulation of legal services and the legal profession in the future.

¹ See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), available at: <http://www.osce.org/mc/23295?download=true>.

III. EXECUTIVE SUMMARY

7. The Draft Law introduces a wide range of far-reaching changes to the system of legal service provision and the organization of the legal profession in Kazakhstan. The Draft Law is divided into four sections which correspond to four distinct but interrelated thematic areas. Section 1 establishes a general framework for legal service provision. Section 2 establishes a framework for state guaranteed legal aid. Section 3 deals with the regulation of the profession of the advocate, including issues such as guarantees of the functioning of advocates, admission to the profession, bar associations (membership, internal organization, powers and responsibilities, etc.), and disciplinary action. Section 4 introduces the profession of legal consultant.
8. Access to an independent legal profession is a cornerstone of the right to a fair trial. It is also an essential element of effective protection of all other human rights. The Draft Law purports to improve the quality of legal services and their accessibility. To this end, it introduces numerous measures that increase state regulatory and oversight powers in relation to legal professionals, specifically, advocates and currently unregulated practicing lawyers who are not advocates. Many of those measures are not necessarily incompatible with international standards and comparative practices in the OSCE area, although their impact in practice is impossible to assess without in-depth understanding of the legal, political, social and economic context. However, any increase in state oversight of the professional activities of lawyers is, at the very least, concerning especially if it is based on an approach that treats public interest and the independence of the legal profession as competing or, even, conflicting considerations. The independence of the legal profession is in the public interest. It serves the rights and interests of *users* of legal services, that is, *every member of society*, and not just the interests of those who provide such services.
9. There exists a considerable diversity in how legal services and the legal profession are organized and regulated in the OSCE area. There is more than one way to ensure that the legal profession is independent, accessible and capable of delivering legal services of high quality. This Opinion focuses primarily on those aspects of the Draft Law that are intrinsically problematic from the perspective of international standards. However, there is no guarantee that those Draft Law provisions that are apparently compliant with the relevant international standards (and, therefore, largely unaddressed in this Opinion) will not have negative impact on the independence of lawyers and quality of legal services when they are implemented in practice. This assessment can only be made on the basis of comprehensive and in-depth information about all important aspects of legal service provision in Kazakhstan, both in law and in practice, and a thorough consideration of all conflicting and competing perspectives. The only way in which such information can be gathered and analyzed by the policy makers is through public consultations with all interested parties.
10. While the drafters made appreciable effort to involve the legal profession in the drafting, those steps fell short of what is required for legislation of the Draft Law's importance and complexity. ODIHR is of the opinion that the reforms proposed in the Draft Law should undergo, prior to their adoption, broad and inclusive consultations with all interested parties, including both providers and users of legal services. Special care should be taken to seek and encourage participation of ordinary members of the public as well as vulnerable groups who are particularly dependent on legal assistance in asserting their rights (see paras. 81-88).

11. In addition to what has been stated above, OSCE/ODIHR makes the following recommendations with regard to the contents of the Draft Law:

As for the general framework for legal service provision:

- A. To expressly provide for the principle of non-discrimination in access to legal services, admission to the legal profession, and participation in lawyers' professional associations; [paras. 18-19]
- B. To remove the designated state body's power to coordinate legal service providers or, at least, define the meaning of coordination clearly and in such a way that it will not create a potential for undermining the independence of legal service providers; [para. 20]
- C. To decrease the level of state involvement in setting professional standards and performance indicators; [para. 21]
- D. To clarify and minimize the state's role in determining the fee structure for client-paid legal services provided by advocates; [paras. 22-23]

As for state guaranteed legal aid:

- E. To remove the section on state guaranteed legal aid from the Draft Law and, instead, develop a separate law on legal aid specifically which, following broad and inclusive public consultations, would address all key aspects of the provision of legal aid in sufficient detail; [paras. 36-37]
- F. To increase the overall accessibility and sustainability of the legal aid system by distinguishing between primary and secondary legal aid and widening the range of legal aid providers to include legal consultants, paralegals, NGOs and legal clinics as primary legal aid providers and to include legal consultants as secondary legal aid providers in civil cases; [paras. 29-31]
- G. To set out clear eligibility criteria for all categories of legal aid in a comprehensive manner; [paras. 32-33]
- H. To establish an operationally independent body to manage legal aid services across the country whose functions would include those currently assigned to the designated state body as well as additional functions, such as reviewing requests for legal aid and appointing lawyers/legal aid providers; [paras. 34-35]

As for the regulation of the legal profession of the advocate:

- I. To clarify the scope of key safeguards of the functioning of advocates by expressly listing all exceptions to the duty of state authorities and officials to recognize the right of an advocate to represent their client and to the protection from interrogations, searches and seizures of case files, other related documents and equipment; [para. 39]
- J. To clarify and narrow down the list of grounds for banning a person from the profession of the advocate by removing bans which do not involve a criminal conviction or other independently established wrongdoing, limiting bans arising out of unspent criminal convictions to only crimes of a certain level of gravity and/or certain nature, and specifying in greater detail grounds related to dismissals from military service or law-enforcement and judicial bodies; [paras. 42-44]
- K. To consider making the Bar in charge of managing the admission process, including the establishment and administration of qualification commissions, or, at

the very least, strengthen the independence of qualification commissions by clarifying that the appointment of members selected by regional bar associations does not depend on further approval by the Ministry of Justice, increasing the ratio of advocates to state-appointed members, and providing selection criteria for commission members appointed by the Ministry of Justice; [paras. 45-47]

- L. To make the Bar in charge of issuing licenses or, at the very least, revise the licensing procedure to ensure that a license is issued automatically once the qualification examination is successfully completed; [paras. 48-50]
- M. To raise the cap on the number of terms an individual can serve on the councils of local bar associations and the Republican Bar Association to at least two terms, if not remove this restriction altogether; [para. 54]
- N. To remove the requirement for the designated state body's mandatory involvement in the adoption of professional standards and performance indicators for legal service provision, apprenticeship rules, and standards for professional development; [para. 55]
- O. To expressly provide for the right to a fair hearing in disciplinary proceedings, including the right to be represented by a lawyer of one's choosing, and to expressly require that disciplinary decisions be well-reasoned; [para. 62]
- P. To ensure that all disciplinary commission members, regardless of the body appointing them, are individually independent and, in particular, remove the reference to designated state body appointed commission members as 'representatives of the designated body' and expressly provide that these appointees are chosen from among representatives of civil society and academia rather than the personnel of the designated body; [paras. 57-58]
- Q. To extend the service time for individual members of disciplinary commissions or/and increase the number of terms a member can serve on the same commission; [para. 59]
- R. To provide for a realistic timeframe for disciplinary proceedings that would be sufficient for a proper examination of even the most complex cases and to consider providing a time limit for lodging a disciplinary complaint; [paras. 60-61]
- S. To define all grounds for suspending and terminating/revoking an advocate's license in a clear, precise and exhaustive manner and to clearly stipulate that any suspension or revocation/termination of a license which results from unsatisfactory performance or professional misconduct or other form of wrongdoing can be initiated only on the basis of a preceding decision of a disciplinary commission or a judicial body; [paras. 64-66]

As for the regulation of the profession of legal consultant:

- T. To fundamentally rethink the Draft Law's model of self-regulation to ensure that it is well adapted to the purpose of developing and upholding professional standards and that legal consultants are not subject to arbitrary and unfair differences in their treatment on such issues as admission to legal practice and disciplinary liability; [paras. 73-74]
- U. To include the protection of the interests and independence of legal consultants as one of the key purposes of chambers of legal consultants and reflect this purpose in the specific functions of chambers described in the Draft Law; [para. 72]

- V. To clarify whether membership in a chamber of legal consultants is mandatory for all legal consultants or only for those who wish to represent clients in court cases; [para. 71]
- W. To clarify and flesh out the structure and composition of disciplinary commissions, the procedure of appointing their members, and the procedure for disciplinary hearings – with a view to ensuring the right to a fair hearing and preventing potentially unacceptable levels of divergence in disciplinary practices of different chambers; [paras. 75-76]
- X. To significantly clarify and limit the designated state body’s oversight powers with regard to chambers of legal consultants, ensure full respect for chambers’ autonomy, and ensure that any measures taken against chambers are proportionate and respectful of the independence of their individual members. [paras. 77-79]

Further recommendations, **highlighted in bold**, are included in the text of the Opinion.

IV. ANALYSIS AND RECOMMENDATIONS

1. Relevant international standards

- 12. Access to an independent lawyer is an essential element of the right to a fair trial. Article 14(3) of the International Covenant on Civil and Political Rights (‘ICCPR’) guarantees, among other procedural safeguards afforded to defendants in criminal cases, a right “to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing” and “to defend himself in person or through legal assistance of his own choosing.”
- 13. The most comprehensive international (non-binding) instrument on the questions of protecting the right to access to legal services and the independence of the legal profession is the Basic Principles on the Role of Lawyers (‘Basic Principles’).² In their preamble, the Basic Principles stress that “adequate protection of the human rights and fundamental freedoms to which all persons are entitled ... requires that all persons have effective access to legal services provided by an independent legal profession.” The Basic Principles provide guidance on essential aspects of the organization of the legal profession, such as access to legal services, lawyers’ admission to the profession, lawyers’ key duties and responsibilities, guarantees for the proper functioning of lawyers, self-organization of lawyers, and disciplinary liability. Principle 16 requires that states “ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”

² Basic Principles of the Role of Advocates, adopted by the Eighty United Nations Congress on the Prevention of Crimes and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>>.

14. The importance of access to a lawyer is also recognized at the regional level. Article 14(3) of the European Convention on Human Rights guarantees the right of everyone charged with a criminal offence “to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”³ Important guidelines regarding the independence of lawyers are provided in the Council of Europe’s Recommendation No. R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer (‘CoE Recommendation No. R(2000)21’).⁴ It recommends, *inter alia*, that decisions on admission to legal practice should be made by an independent body (Principle 1); professional standards and codes of conduct should be developed by lawyers’ professional associations (Principle 3); bar associations and other professional associations should be self-governing and independent (Principle V); and all persons should have effective access to legal services provided by independent lawyers (Principle IV).
15. OSCE human dimension commitments include a number of commitments that directly address the independence of lawyers. The 1991 Moscow document calls on OSCE participating States to “recognize the important function of national and international associations of judges and lawyers [...] in strengthening respect for the independence of their members.”⁵ The 2006 Brussels Declaration on Criminal Justice Systems requires that “[a]ll necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer, without discrimination and without improper interference from the authorities or the public.”⁶ It also calls for independent bodies to be put in charge of admission to the legal profession.

2. Provisions applicable to all legal service providers

16. The Draft Law is divided into four sections. Section 1 sets out a general framework for legal services and legal service providers. Section 2 deals with state guaranteed legal aid. Section 3 is dedicated to the regulation of advocates, including advocates’ rights and responsibilities, admission to the profession, bar associations, and disciplinary responsibility. Section 4 introduces and regulates the profession of legal consultant.
17. Section 1 provides the definitions of key terms used in the Draft Law, sets out basic principles of the provision of legal services, establishes the principle of the independence of legal service providers, defines their key duties and responsibilities, defines categories of legal services, and, importantly, lists key powers granted to the government with regard to the regulation and oversight of legal services and legal service providers.
18. Article 3 provides a list of basic principles for the provision of legal services which include, *inter alia*, the independence of legal service providers, their autonomy in determining the scope and methods of legal assistance, the legal professional privilege, accessibility of legal services, and lawyers’ duty to act in the interests of the client. All principles included in Article 3 are in keeping with international standards, such as the Basic Principles. However, the important principle of non-discrimination is missing

³ <http://www.echr.coe.int/Documents/Convention_ENG.pdf>.

⁴ <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804d0fc8>.

⁵ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, in *OSCE Human Dimension Commitments, Volume I, Thematic Compilation* (3rd ed.), p.98, <<http://www.osce.org/odihr/76894?download=true>>.

⁶ Document of the Fourteenth Meeting of the Ministerial Council, Brussels, 4-5 December 2006 Brussels 2006, *Op. cit.* p. 99.

from the list. The principle of non-discrimination is relevant to both access to lawyers/legal services and admission to the legal profession. In fact, it must be guaranteed in all aspects of legal service provision and the organization of the legal profession addressed in the Draft Law, including legal aid, admission to professional associations, internal structures of professional associations, disciplinary action, state oversight, etc.

19. Principle 2 of the Basic Principles calls upon states to “ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.” Principle 10 focuses on non-discrimination in access to the legal profession: “Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.” **The drafters should expressly provide for the principle of non-discrimination in access to legal services, admission to the legal profession, and participation in lawyers’ professional associations.**
20. Article 21 determines regulatory powers granted to the Cabinet of Ministers, while Article 22 addresses regulatory and oversight powers belonging to the designated state body. (Although the designated state body is not specified in the Draft Law, it is understood from the ODIHR meetings which took place on 28-29 November 2017, that this function will be performed by the Ministry of Justice.) Point 2 of Article 22 of the Draft Law provides that the designated state body “coordinates the activities of legal service providers.” The meaning of the term ‘coordination’ is quite unclear in this context. It is difficult to deduce what specific actions it may involve, but it clearly creates a potential for the executive branch to interfere with/control the work of individual legal service providers. Without additional clarifications and limitations, this provision undermines the principle of the independence of the legal profession guaranteed in Article 6 of the Draft Law and in international standards (see paras. 13-15 above). **The drafters should either remove the designated state body’s power to coordinate legal service providers or define the meaning of coordination clearly and restrictively so that it does not create room for the designated state body to interfere with the independence of legal service providers.**
21. Points 6 and 7 of Article 22 establish certain powers with regards to developing professional standards and performance indicators for legal service provision. These powers are shared with professional legal associations (bar associations and chambers of legal consultants), but the involvement and consent of the designated state body is mandatory. The principles of independence and self-governance would be better served if these powers lied entirely with the relevant professional associations. Under Principle 26 the Basic Principles, “[c]odes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation.” **The drafters should consider allocating the powers of developing and adopting standards and indicators related to the provision of legal services (with the exception of state guaranteed legal aid) to the self-governing bodies of the respective legal professions.**

22. The Draft Law is confusing on the question of the remuneration of legal service providers. Point 3 of Article 21 provides that the Cabinet of Ministers “determines the size of remuneration for legal services provided by advocates.” Point 13 of Article 22 additionally assigns the responsibility for “adopting rules on remuneration for legal services provided advocates” to the designated state body. As is discussed below, it is possible that the drafters’ real intention was to confine these powers to state-guaranteed legal aid (see para. 36). However, this is only speculation. At face value, the two provisions must apply to all legal services provided by advocates. At the same time, in an apparent contradiction, Article 48 of the Draft Law provides that fees for legal services are determined by mutual agreement between the advocate and client.
23. While the state’s power to regulate lawyers’ fees in the context of state-paid legal aid is obvious and uncontroversial, determining the size of fees lawyers may receive for client-paid legal services is problematic and not in line with the prevailing practice among OSCE participating States.⁷ It is good practice to allow lawyers to negotiate their fees relatively freely, while providing some basic principles of the fee structure and requiring that fees should be generally adequate and proportionate to the value and complexity of the case. Some states have also chosen to establish mandatory minimum fees or/and scales and tariffs that can be referred to in default of an agreement between the lawyer and the client (e.g., Albania, Austria, Croatia).⁸ **The drafters should clarify the extent of the executive branch’s powers to determine the size of advocates’ remuneration for their services. While it may be advisable for the state authorities to establish basic principles of remuneration, such as proportionality, and provide scales and tariffs that can be used in the absence of a written agreement between the advocate and client, advocates should be generally free to negotiate their fees for client-paid legal services. At any rate, the contradiction between Articles 21, 22 and 48 should be resolved.**
24. Paragraph 9 of Article 1 provides a brief definition of conflict of interest which is somewhat fleshed out in paragraph 7 of Article 34. While Article 1(9) applies to all legal providers (i.e. including legal consultants), Article 34(7) is limited to advocates only. This difference in the definition of conflict of interest for advocates and for legal consultants is difficult to justify, especially because the definition contained in Article 1 is insufficiently detailed. On the other hand, the Article 34 definition also misses a core element of the concept of conflict of interest. The Draft Law refers expressly only to a conflict between the private interests of the advocate/legal service provider and the interests of their client. However, this concept is primarily designed to address possible conflicts *between the interests of different clients* represented by the same lawyer. The Council of Bars and Law Societies of Europe’s Code of Conduct for European Lawyers provides an example of good practice in approaching conflict of interest in the context of the legal profession:
- 3.2.1. A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.
- 3.2.2. A lawyer must cease to act for both or all of the clients concerned when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where the lawyer’s independence may be impaired.

⁷ For an overview of national practices on this issue, see World Bank, *Comparative Analysis of Bar Associations and Law Societies in Select European Jurisdictions*, 2017, pp. 24-26, <<https://openknowledge.worldbank.org/bitstream/handle/10986/28959/121502-WP-ComparativeAnalysisofBarAssociationandLawSocietiesinSelectEuropeanJurisdictionsEN-PUBLIC.pdf?sequence=1&isAllowed=y>>.

⁸ *Ibid.*

3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of breach of a confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.

3.2.4. Where lawyers are practicing in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members

It is recommended that the drafters amend the definition of conflict of interest to also expressly include conflicts between different clients of the same lawyer. Definitions of conflict of interest in Articles 1 and 34 should be aligned so that essentially the same principle would govern both advocates and legal consultants.

25. Article 9 provides a general duty of all legal service providers to observe the legal professional privilege. The concept of the legal professional privilege, however, is not defined. Instead, its definition can be found in Article 38 but only insofar as it applies to advocates. **The drafters should provide the definition of the legal professional privilege which applies to legal consultants.**

3. State-guaranteed legal aid

26. Section 2 of the Draft Law (Articles 23-30) is dedicated to provision of state guaranteed legal aid (hereafter ‘legal aid’). To a certain degree, it covers issues such as: (i) providers of legal aid; (ii) the right to legal aid (persons entitled to receive legal aid); and (iii) the mechanisms of managing, delivering and funding legal aid. Confusingly, additional important provisions pertaining to legal aid are found elsewhere in the Draft Law. In particular, the definition of legal aid is contained in Article 1, the powers and responsibilities of the state with regard to regulating legal aid are addressed in Article 22 (the competence of the designated state body), and important issues relating to delivery of and eligibility for legal aid are included in Article 49 in Section 3, which deals with advocates.
27. The drafters’ determination to improve the legal framework for legal aid in Kazakhstan is highly commendable. Legal aid is an essential element of the right to a fair trial and, more broadly, of the rule of law. A fair and effective system of legal aid is indispensable for equal access to justice and, ultimately, for equal protection of human rights, including the human rights of the most vulnerable segments of society. It is all the more important for a country like Kazakhstan where a large proportion of the population is restricted in its access to quality legal services due to the general paucity of qualified legal professionals,⁹ their uneven geographic distribution and the costs of their services. However, the legal framework envisaged in the Draft Law is flawed. It is incomplete and somewhat confusing and vague. Those aspects of legal aid that the Draft Law does cover with sufficient clarity raise separate concerns with regard to their efficacy and impact on the independence of legal aid providers.
28. Article 1 defines ‘state guaranteed legal aid’ as legal assistance provided “on a free of charge basis” – and, similarly, Article 14 mentions that ‘in circumstances prescribed by law, legal services are provided free of charge. This definition is somewhat ambiguous. While legal aid is generally free at the receiving end (i.e. for legal aid beneficiaries), legal professionals providing legal aid should still be compensated for their work by the state. Compelling legal professionals to provide legal aid without any remuneration may

⁹ According to the concept note attached to the Draft Law, Kazakhstan has only 1 advocate per 3900 persons.

raise concerns under Article 8 of the ICCPR (which prohibits forced or compulsory labor), even though in very limited and clearly defined circumstances it may be permissible, e.g., when it is part of one's professional training and it does not interfere unduly with one's private legal practice.¹⁰ At the same time, it is possible to have a system in which legal aid is not always completely free at the receiving end. In some countries (e.g., the Netherlands, Moldova), for certain categories of cases – typically, civil cases – eligible individuals are required to cover a portion of their legal costs. Furthermore, the scope of legal aid may not be necessarily limited to legal assistance per se, as it may also include a variety of exemptions from court fees, stamp duties, etc. **The definition of state guaranteed legal aid should make it clear that the costs of legal aid are covered by the state. The drafters may also wish to consider if the definition should be flexible enough to allow for types of legal aid that are not entirely free of charge at the receiving end or/and those that go beyond legal assistance as such.**

29. The Draft Law does not distinguish between primary and secondary legal aid. Primary legal aid can be broadly defined as “any form of individual or community-oriented legal advice, assistance or representation that be may be provided by non-certified lawyers (paralegals), and which does not include representation before courts or other activities that may only be performed by certified lawyers.”¹¹ For instance, Ukraine's Law on Free Legal Aid includes in primary legal aid the following types of legal services: provision of legal information; consultation on legal issues; and drafting non-judicial requests, complaints and other legal documents.¹² Many OSCE participating States have opted for a mixed system of primarily legal aid delivery which involves providers established by the state (e.g. state-run legal advice bureaus, public servants employed by municipal authorities) and various non-governmental providers contracted by the state (paralegals, NGOs, university legal clinics, etc.).¹³ Secondary legal aid involves representation in court proceedings and can only be performed by appropriately qualified (certified) lawyers.
30. The Draft Law does not subscribe to the above categorization. Instead, it divides all legal services (not specifically legal aid) into four categories: provision of legal information; legal consultation; defense and representation in court and before other bodies; and “other legal measures to defense the lawful interest of a client” (Article 15). This distinction is partially followed through in the context of legal aid, as Article 26 envisages that legal aid in the form of legal information can be delivered by public authorities in accordance with the Law on Access to Information. Article 26 also mentions bailiffs and notaries as legal aid providers, but rather than explaining their function and the scope of legal aid involved, it simply refers to specialized laws that regulate those two professions. It is assumed, however, that the scope of legal aid bailiffs and notaries can render is very narrow and incidental to their main functions.
31. Apart from those limited and poorly defined exceptions, advocates are designated as the sole providers of all legal aid (Articles 27 and 49). Such an approach is bound to

¹⁰ For guidance, see European Court of Human Rights, *Van Der Mussele v. Belgium* (application no. 8919/80, judgment of 23 November 1983), paras. 31-40.

¹¹ UNDP, *International Study of Primary Legal Aid Systems with the Focus on the Countries of Central and Eastern Europe and CIS* (2012), p. 14 <http://www.ua.undp.org/content/dam/ukraine/docs/seichasen_4708604_eng-international_study-legal_aid_systems.pdf>.

¹² Article 7 of the Law of Ukraine on Free Legal Aid, <<https://helsinki.org.ua/en/articles/the-law-of-ukraine-on-free-legal-aid/>>.

¹³ *International Study of Primary Legal Aid Systems, op. cit.*, pp. 4-5

dramatically restrict the availability of legal aid due to the high costs of engaging advocates in every case, regardless of its level of complexity, and the general shortage of advocates. As the practice of many OSCE participating States shows, a significant share of legal aid (including legal consultations, assistance with drafting legal documents, and representation before non-judicial bodies) can be successfully provided by legal professionals who are not advocates, with no negative impact on the quality of the service but at a lower cost. At any rate, there is no apparent justification for excluding legal consultants from the scope of legal aid providers, since legal consultants are otherwise qualified to provide almost the same range of legal services, including representation in court in civil cases. **It is recommended that the categories of primary legal aid and secondary legal aid are introduced in order to increase the viability and accessibility of the overall legal aid system. As a more cost-effective approach, the drafters should consider a wider range of providers of primary legal aid, including paralegals, NGOs and legal clinics. Legal consultants should be allowed to provide primary legal aid and, in civil cases, secondary legal aid.**

32. The Draft Law does not contain a comprehensive list of persons entitled to legal aid or define general eligibility criteria. Paragraph 1 of Article 24 ('Persons entitled to receiving state guaranteed legal aid') determines that everyone, including legal entities, are entitled to legal aid in the form of provision of legal information (which, as was pointed out earlier, falls considerably short of primary legal aid). As for the other forms of legal aid, paragraph 2 of Article 24 simply indicates that grounds and procedures for granting legal aid are determined in "legislation on criminal procedure, administrative offences, and civil procedure," without providing specific references to relevant provisions. Although it is not cross-referenced in Article 24, Article 49 in Section 3 ("Advocate's practice") does provide a selective list of cases in which legal aid is granted. It is assumed that the list is partial, since it does not address legal aid in criminal or administrative proceedings and it is quite clear from paragraph 3 of Article 49 as well as Article 24 that other grounds exist, or may exist, for granting legal aid under other laws.
33. Determining clearly who is entitled to legal aid (and in what form) is the main reason for having a law on free legal aid in the first place. It is a major shortcoming of the Draft Law that it fails to do it adequately. A comprehensive list of categories of persons and/or legal cases eligible for legal aid (with references to specific provisions in other legislation, if necessary) will have two important advantages. First, it makes a legal aid law more useful and user-friendly for potential beneficiaries and providers of legal aid. Second, it prompts the drafters to review current eligibility criteria and identify existing gaps and inconsistencies, thereby providing an occasion and an opportunity for improving access to legal aid rather than simply retaining the status quo. **ODIHR recommends that clear eligibility criteria for all categories of legal aid are expressly and comprehensively set out in this Draft Law or, preferably, in a separate law specifically dedicated to legal aid (see para. 37). Splitting the regulation of this issue between different sections of the Draft Law should be avoided, as it is unnecessary and confusing to the reader.**
34. The Draft Law does not establish a separate body to manage the legal aid system. Instead, supervisory functions in this area are assigned to the same designated state body which deals with legal services and the regulation of the legal profession. This approach to managing legal aid is not line with international standards and the good practices of other OSCE participating States. Guideline 11 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems recommends that states

“consider establishing a legal aid body or authority to provide, administer, coordinate and monitor legal aid services” which should be “free from undue political or judicial interference, be independent of the Government in decision-making related to legal aid and not be subject to the direction, control or financial intimidation of any person or authority in the performance of its functions, regardless of its administrative structure.”¹⁴ In practice, this means that a legal aid body “must have operational autonomy to take management decisions, for example to select legal aid providers, or to decide on spending of the legal aid budget (within the framework established by the law and policy priorities developed by the Government).”¹⁵ Georgia, Hungary, Lithuania, Moldova and the Netherlands are among OSCE countries that have set up independent institutions to manage legal aid services, either as completely separate bodies or as operationally independent entities within the Ministry of Justice.¹⁶

35. The powers which the Draft Law assigns to the public authority in charge of managing legal aid also need elaboration and clarification. Crucial functions such as verifying applicants’ eligibility for legal aid and assigning lawyers to individual cases have not been addressed. No mechanism is envisaged for involving legal aid providers (e.g., the Bar) and other key stakeholders in decision making, even though their input would be very useful on such issues as developing quality criteria and developing and establishing quality control mechanisms for legal aid services. **ODIHR recommends that the drafters consider the establishment of an operationally independent body to manage legal aid services across the country. In addition to those already envisaged in Article 22, the functions of this independent legal aid body should include reviewing requests for legal aid and appointing lawyers/legal aid providers. The drafters may also wish to consider an advisory board or similar consultative mechanism to enable legal aid providers and other stakeholder to have input in the formulation of legal aid policies and standards.**
36. It is a peculiar feature of the Draft Law that it attempts a comprehensive regulation of both state-guaranteed free legal aid and legal services at large. By contrast, many OSCE participating States have opted for regulating legal aid and the legal profession in separate legislation (e.g., Bulgaria, Estonia, Finland, Georgia, Lithuania, Kyrgyzstan, Moldova, The Netherlands, Slovenia, and Ukraine). The drafters’ approach makes the Draft Law cumbersome and difficult to use. Crucially, it creates confusion between the two legal frameworks, as it is not always clear if certain provisions apply to all legal services or only to legal aid. The concept note for the Draft Law uses the term ‘legal assistance’ (юридическая помощь) to denote (free) legal aid, whereas in the Draft Law this term describes the entirety of all legal services, whether paid privately or by the state. The same terminological confusion appears to have made its way into the actual text of the Draft Law. For instance, the powers and responsibilities of the designated state body under Article 22 of the Draft Law include adopting “rules on remuneration for legal assistance provided by an advocate” (point 13). Given the definition of ‘legal assistance’ (юридическая помощь) under Article 1, the literal interpretation of this provision is that fees for all legal services provided by practicing lawyers, including privately paid, are determined by the state. Not only would this run counter to the principle of the independence of lawyers, but it would also contradict Article 48 of the Draft Law which makes it clear that fees are negotiable and determined by mutual

¹⁴ https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

¹⁵ International Study of Primary Legal Aid Systems, *op. cit.*, p. 3.

¹⁶ *Ibid.*, pp. 15-20.

agreement between the advocate and the client. Since point 13 of Article 21 is immediately preceded and immediately followed by points expressly dealing with the designated body's functions related to free legal aid, it could be speculated that the real intention of the drafters was to confine the powers under point 13 to legal aid.

37. The drafters' attempt to simultaneously tackle legal aid and the regulation of the legal profession leaves a strong impression that insufficient attention was paid to the former topic as a result. This is evidenced by a lack of a comprehensive vision for the system of legal aid in the concept note accompanying the Draft Law and by the incomplete nature of the Draft Law's legal aid related provisions which miss a number of crucial elements and are replete with broad references to other legislation. It is telling that out of the total number of 104 articles in the Draft Law, only nine are dedicated to legal aid. The public debate and consultation on the Draft Law have also largely focused on the controversial changes to the regulation of the legal profession, with the legal aid component of the Draft Law receiving little public attention and scrutiny. **ODIHR recommends that the section on state guaranteed legal aid be removed from the Draft Law and that legal aid be instead regulated in a separate law in the framework of a comprehensive state policy for legal aid. Such a law should undergo broad and meaningful public consultations which should include not only legal professionals but all other relevant stakeholders, including civil society organizations and the public at large.**
38. The Draft Law does not make it sufficiently clear if advocates participate/are included in the legal aid program on a strictly voluntary basis. Article 27(3) provides only that the Republican Bar Association is responsible for setting criteria for selecting advocates, while regional bar associations are required to submit their lists of selected advocates to the local justice authorities. The same provision also allows the possibility of the list of participating advocates being generated automatically. In principle, an advocate should be free to decide whether to get involved in the delivery of legal aid. If, however, advocates are made obliged to provide legal aid, the system should be devised in such a way as to avoid undue and excessive interference with advocates' ability to pursue their private legal practice. In other words, the advocate should at least be able to refuse provision of legal aid on specific serious grounds, as is the case in Poland. In Moldova, the possibility of compelling a lawyer to provide legal aid is restricted in a different way: in exceptional circumstances the legal aid authority may appoint a private lawyer on a compulsory basis if no lawyer voluntarily participating in the legal aid program can be secured, but such an assignment must be limited to 120 hours per year.¹⁷ **It is recommended that the Draft Law makes it clear that participation in legal aid delivery is voluntary. However, if they envisage situations in which it can be compulsory, any exceptions to the principle of voluntary participation should be expressly and clearly provided in the Draft Law.**

4. Regulation of the profession of the advocate

4.1. Professional activity

39. Articles 34 and 36 guarantee certain rights that are essential for advocates to be able to perform their core functions effectively and independently. Paragraph 4 of Article 34

¹⁷ Art. 31¹ of the Law on state guaranteed legal aid (26 July 2007), <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=325350&lang=2>.

obliges state authorities and officials to recognize the right of an advocate to represent their client “subject to exceptions provided in laws of the Republic Kazakhstan.” Paragraph 3 of Article 36 protects advocates and their staff from interrogations and demands to submit information in relation to their cases, while paragraph 5 protects against searches and seizures of case files, other related materials, and equipment. These guarantees too are “subject to exceptions provided in laws of the Republic of Kazakhstan.” Such broad references to unspecified legislation make it impossible for the reader to form an idea about the actual extent of these key protections. This is particularly unacceptable for a law that seeks to provide a comprehensive regulation of the legal profession. **The Draft Law should expressly list all exceptions to the protections afforded to advocates under Articles 34 and 36. At the very least, the drafters should ensure that its references to other legislation in which those exceptions are provided are specific and exhaustively listed.**

4.2. Admission to the profession

40. Article 33 of the Draft Law establishes the following basic three requirements a person must meet to be able to practice law as an advocate: (i) Kazakh nationality; (ii) a law degree; and (iii) membership in a bar association. Given that part of the rationale behind the Draft Law is to ease access to the legal profession and increase the overall number of qualified lawyers, the merits of the nationality restriction are unclear. Provided that an individual lawfully resides in Kazakhstan, their nationality has no bearing on their ability to perform the job of an advocate and is not indicative of their professional or personal qualities. In many OSCE countries (e.g. France, Germany, Italy, Russia, Sweden, Ukraine, the United Kingdom, and the United States), one’s citizenship is irrelevant for purposes of admission to legal practice.¹⁸
41. The other two requirements are undoubtedly relevant and commonly used in other countries. However, the legal education requirement would benefit from some elaboration. Article 33 refers simply to ‘higher legal education,’ without specifying whether this also includes law degrees earned abroad. It would seem unwise to restrict this requirement to legal education received in Kazakhstan only. Yet, to ensure that a certain standard of quality is always met, the Draft Law should specify that foreign degrees must be officially recognized in Kazakhstan. **It is recommended that the drafters reexamine the need for a citizenship requirement for advocates and clarify whether, and to what extent, the higher legal education requirement covers law degrees received from academic institutions abroad.**
42. Paragraph 2 of Article 33 also provides for a number of additional circumstances which permanently or temporarily preclude a person from being able to work as an advocate. They include, inter alia, unspent criminal convictions and instances of dismissal from military service, prosecutorial services, other law-enforcement agencies and courts ‘on negative grounds.’ These limitations strike as being somewhat arbitrary, overly broad and, therefore, disproportionate. For instance, the ban resulting from an unexpired criminal conviction is of a blanket nature, as it applies to all criminal convictions

¹⁸ For an overview of admission requirements for selected countries, see CCBE, *Conditions for the admission of lawyers from non-EU Member States to the title of the local legal profession in each EU Member State and conditions under which lawyers from non-EU Member States can perform temporary services in each Member State under their own home title*, <http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/INTERNATIONAL_LEGAL_SERVICES/ILS_Position_papers/EN_ILS_20050125_Conditions-for-the-admission-of-lawyers-from-non-EU-Member-States-to-the-title-of-the-local-legal-profession-in-each-EU-Member-State-and-conditions-under-which-lawyers-from-non-EU-Member-States-GATS.pdf>.

- regardless of the seriousness or nature of the offence committed. Even more problematic is the ban resulting from the application of subparagraphs 4 and 10 of paragraph 4 of Article 35 of the Criminal Procedure Code (which determines circumstances precluding criminal prosecution, such as the application of the statute of limitation). In situations covered by those provisions, a person is not convicted for any crime and, therefore, the very fact that they committed a criminal offence is not established. It is unjustifiable that anyone can be banned from the profession in the absence of any proven wrongdoing on their part (or, in fact, even without any criminal charges brought against them).
43. The ban resulting from dismissal from military service or an office in law-enforcement or judicial authorities ‘on negative grounds’ is also highly problematic. ‘Negative grounds’ is too vague an expression. ‘Negative grounds’ may include situations that do not impugn on the relevant moral or professional qualities of an individual, such as dismissals for political reasons (e.g. for public statements critical towards the government) or the dismissal of a person in a managerial position for the misconduct or poor performance of their staff. Moreover, this provision imposes a lifetime ban (regardless of the seriousness of the misconduct which led to the dismissal), whereas the same article provides for only a temporary (3-year) ban on individuals dismissed from a public office for committing a corruption offence. The distinction is difficult to explain or justify, which makes the blanket lifetime ban both disproportionate and arbitrary.
44. **ODIHR recommends that the drafters clarify and narrow down the list of grounds for banning a person from the profession of the advocate. Specifically, they should: (i) narrow the ban relating to unspent criminal convictions to crimes of a certain level of gravity and/or certain nature with a nexus to the competences involved in exercising the profession of the advocate; (ii) delete the provision which effectively bans a person from the profession in the absence of any established wrongdoing on their part (the application of Articles 35(4) and 35(10) of the Criminal Procedure Code); (iii) reconsider if a person should be banned as a result of the application of Article 35(9) of the Criminal Procedure Code, given that such a person is not held criminally liable; (iv) specify which ‘negative’ grounds for dismissal from military service or law-enforcement and judicial bodies must result in a ban on the profession so that such a ban is proportionate to the seriousness of the misconduct involved; and (v) reconsider the lifelong duration of the latter ban and, at any rate, ensure that no arbitrary differences exist between the scope of restrictions imposed on similar grounds.**
45. Under the Draft Law, admission to the bar is a two-step process involving an apprenticeship (Article 39) and a bar examination (Articles 40 and 41). Examinations are conducted by qualification commissions established under regional justice authorities. According to Article 40, these commissions consist of seven members, three of whom are advocates selected by the relevant bar association. The overall personal composition of each commission and the rules of procedure are determined by the Ministry of Justice. It is therefore unclear if the members selected by the bar associations are still subject to further approval by the Ministry of Justice. The Draft Law does not provide any criteria for selecting the remaining four (non-bar) members of a qualification commission. The commissions’ integration into the justice system and the fact that the majority of their members are appointed by the Ministry of Justice without any clear criteria raise concerns about their independence.

46. The OSCE Brussels Declaration on Criminal Justice Systems states that “[d]ecisions concerning the authorisation to practice as a lawyer or to join the profession should be taken by an independent body.”¹⁹ Similarly, at the regional level, CoE Recommendation R(2000)21 provides that decisions “concerning the authorisation to practice as a lawyer or to accede to this profession should be taken by an independent body.”²⁰ According to the Special Rapporteur on the independence of judges and lawyers, “[t]he legal profession is best placed to determine admission requirements and procedures, and it should be responsible both for the administration of examinations and other requirements.”²¹ **Therefore, the drafters should consider putting the Bar in charge of managing the admission process, including the establishment and administration of qualification commissions. However, if they find this approach unsuitable for Kazakhstan’s circumstances, the following steps should be taken to strengthen the independence of qualification commissions in their current setup: (i) the Draft Law should make it clear that members selected by regional bar associations are automatically included and do not depend on any additional approval by the Ministry of Justice; (ii) the ratio of advocates to state appointees in the composition of a commission is reversed so that advocates are in a majority; and (iii) the Draft Law should provide some guidance on the profile/professional background of commission members appointed by the Ministry of Justice, e.g. those could be representatives of the judiciary, civil society or/and academia, but preferably not staff members of the Ministry of Justice.**
47. Article 41 sets out in great detail the process and methodology of conducting qualification examinations. To allow for sufficient flexibility in adapting, updating and improving the format and method of the examination, it would be advisable to avoid this level of detail in the law. It is sufficient for the Draft Law to put forth basic parameters and provide for a right to appeal, leaving the more technical aspects to by-laws or/and rules adopted by the Bar. Paragraph 1 of Article 41 assigns the responsibility for adopting more detailed rules of procedure to the designated state body. This approach is not compatible with the principle of the independence of the legal profession. Moreover, it directly contradicts paragraph 2(5) of Article 69 which makes the Republican Bar Association responsible for developing and adopting rules of procedure for qualification examinations. **The drafters should resolve the apparent contradiction between Articles 41 and 69 which ascribe the same function of establishing the procedure for qualification examinations to the designated state body and the Bar respectively. Preferably this task should be left to the Bar. If, however, the drafters opt for the Article 41 approach instead, they should ensure that the Bar has input in the rules adopted by the designated state body.**

4.3. Licensing

48. Articles 42-45 of the Draft Law deal with the licensing procedure for advocates. These are ones of the most problematic provisions in the Draft Law. In light of the overall system of admission to the profession set out in the Draft Law, a license for the purposes of the Draft Law should be understood as merely a document proving the

¹⁹ *Op. cit.* footnote 6.

²⁰ *Op. cit.* footnote 4.

²¹ UN Special Rapporteur on the Independence of Judges and Lawyers, *2016 Report*, UN Doc A/71/348, 22 August 2016, para. 77, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/264/93/PDF/N1626493.pdf?OpenElement>>.

license-holder has passed the qualification examination and is therefore qualified to practice law as an advocate (whether a candidate meets all other requirements set out in Article 33 is supposed to be ascertained before they are admitted to sit the examination). It should not be treated as a separate process of assessing a person's qualifications/suitability. In consequence, a license should be issued automatically once the qualification examination is successfully passed. The licensing authority should be able to refuse to issue a license only on very narrow, clearly defined technical grounds (such as submission of incorrect or incomplete documents). Yet, this is not the approach adopted in the Draft Law.

49. The Draft Law does not define the licensing authority. This in itself is a serious omission. In light of the existing practice, however, it can be safely assumed that the licensing authority is not the Bar but a state authority (most likely, the Ministry of Justice). Second, Article 42 simply states that licenses are issued in accordance with the procedure and on the conditions "established in the legislation of the Republic of Kazakhstan." Such a vague reference to other legislation is impossible to justify, given that the very *raison d'être* of the Draft Law is to provide for a comprehensive regulation of the legal profession. Somewhat similarly, Article 43 refers to the Law on Permits and Notifications for grounds for refusing to issue a license. Articles 44 and 45 determine grounds for suspending or terminating and revoking licenses. These provisions are also highly problematic. First, they too refer to other, unspecified legislation which may contain grounds for suspension/revocation. Second, some of the grounds which are expressly provided in the Draft Law (points 8 and 9 of para. 2 of Article 44 and para. 3 of Article 45) involve the licensing authority's own assessment of the professional conduct of an advocate, seemingly independently of the existence of disciplinary sanctions imposed by an independent disciplinary body (this aspect of Articles 44 and 45 is additionally discussed in paras. 64-66 below).
50. All these provisions suggest that licensing is in fact an additional tier in the process of admission to the profession of the advocate which results in additional barriers for individuals wishing to practice law as advocates. Moreover, since the licensing process is controlled and managed by the state and is generally unregulated in the Draft Law, it effectively undermines or even negates the guarantees of independence and objectivity of admission to the profession which are embodied in the bar examination process. According to the Special Rapporteur on the independence of judges and lawyers, "licensing systems managed by State institutions are against international standards on the independence of the legal profession."²² **ODIHR recommends that the issuance of licenses should rest with the Bar rather than the executive and that, at any rate, a license should be issued automatically once the qualification examination is successfully completed, with the licensing body's right to refuse to issue a license being limited to narrowly defined technical grounds, such as incomplete or incorrect supporting documents, which should be expressly and exhaustively listed in the Draft Law.**

4.4. Bar associations

51. Chapter 4 of the Draft Law is dedicated to "the organization of the professional activities of advocates." Somewhat confusingly, it mixes the forms in which advocates

²² *Ibid*, para. 76.

can practice law (consultations, bureaus, and as an individual private practice) with the self-regulation of the profession of the advocate (bar associations). **To achieve better structural clarity, it is recommended that the Draft Law addresses these two topics in separate chapters.**

52. Articles 51-63 regulate the establishment, internal structure, powers and responsibilities of bar associations at the local level (under Article 51, only one bar association is allowed per territorial unit), while Articles 67-73 are dedicated to the Republican Bar Association. Bar associations are described in Article 51 as not-for-profit independent, self-governing and self-financed organizations. These provisions of the Draft Law are largely in line with relevant international standards and good practice. However, certain important aspects, including certain powers assigned to bar associations, will benefit from clarification and revision.
53. Articles 55(3) and 69(1) provide that the highest decision-making organs of the local bar associations and the Republican Bar Association – i.e., the general meeting of bar members and the conference of delegates, respectively – require a quorum of two thirds of the total number of bar members. In practice, this quorum may not be easily attained. No solution is envisaged for avoiding a deadlock if a general meeting or the conference repeatedly fail to achieve the quorum. **It is recommended that the drafters consider lowering the quorum for a repeated meeting/conference if on the first attempt the quorum of two thirds could not be achieved.**
54. Under Article 56(1), the same person can serve on the council of a local bar association for one four-year term only. The same restriction is applied to members of the council of the Republican Bar Association under Article 70(2). While such restrictions are not incompatible with existing international standards, they raise doubts from a practical point of view. A complete rotation of all council members every four years will have negative impact on the associations' ability to run in a smooth and stable manner. As self-governing bodies, institutional memory and sustainable practices are particularly important for bar associations as their functioning is not subject to detailed governmental regulation. **The drafters should consider raising the cap on the number of terms an individual can serve on the councils of local bar associations and the Republican Bar Association to at least two terms, if not removing any restrictions altogether.**
55. Article 69 provides that certain functions ascribed to the Republican Bar Association can be discharged only in accordance with an approval by the designated state body. Those functions include: developing and adopting standards and performance indicators for the provision of legal services (points 6 and 7 of para. 2); apprenticeship rules (point 11 of para.2); and standards for professional development (points 12 and 13 of para.2). Upholding professional standards and ethics is one of the core functions of bar associations, and it is at the heart of the principles of independence and self-regulation of the legal profession. **It is recommended that the requirement for a mandatory involvement of the designated state body in the process of developing selected professional standards and rules should be removed from paragraph 2 of Article 69.**

4.5. Disciplinary action

56. Commendably, Articles 74 and 75 of the Draft Law establish independent disciplinary commissions. Article 74 regulates disciplinary commissions established in territorial

units to handle cases in first instance. Article 75 provides for one disciplinary commission established at the national level to deal with appeals. According to Principle 28 of the Basic Principles, “disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court.”²³ Therefore, the Draft Law’s approach is broadly compliant with international standards. However, additional steps could be taken to clarify and strengthen certain important aspects of the disciplinary procedure with a view bringing it further in line with the principle of the independence of the legal profession.

57. Each disciplinary commission consists of six advocates, three “representatives of the designated state body” and two retired judges (Articles 74(1) and 75(1)). The Draft Law does not explain how/by whom disciplinary commission members are appointed. While it can be assumed that advocate members are appointed by respective bar associations and that members representing the designated state body are appointed by the latter, it is completely unclear who will appoint members from among former judges. The fact that some members are appointed by the executive (presumably, the Ministry of Justice) is not in itself problematic. However, it is problematic that these members are referred to as *representatives* of the designated body, thus clearly suggesting that they will be officials working for that body. The independence and impartiality of a disciplinary commission presupposes the independence and impartiality of all of its individual members. Employees of the Ministry of Justice cannot be viewed as independent, as they will still be obliged to take instructions from their superiors at the Ministry, especially considering that, in the language of the Draft Law, they *represent* the Ministry rather than act in their personal capacity. During ODIHR’s visit to Astana in November 2017, the Minister of Justice indicated that in practice his Ministry’s appointees could come from civil society. This approach would be greatly preferable to appointing ministry officials. But if this is the actual intention of the drafters, it should be expressly reflected in the language of the Draft Law.
58. The ratio of advocates to non-bar members is also somewhat problematic when considered in conjunction with the quorum requirement under paragraph 7 of Article 74 (and paragraph 2 of Article 75). The quorum for a commission sitting is six members. Only in commission sittings involving all commission members, the advocates are guaranteed to be in a majority. When a case is examined by a smaller number of commission members, the number of advocates on that panel could be as low as one (on a six-person panel). **The Draft Law should clearly state who appoints disciplinary commission members in each of the three categories. Disciplinary commission members appointed by the designated state body should not be referred to as representatives of that body, but the Draft Law should make it clear that they act in their personal capacity. They should not be employees of the designated body, but should instead be chosen from among representatives of civil society and academia. The drafters should also consider readjusting the total numbers of lawyers on each commission or/and the quorum requirements so that advocates are always guaranteed adequate representation even on commission panels that do not include all commission members.**
59. Articles 74(1) and 75(1) limit the service time of a member of a disciplinary commission to one non-renewable two-year term. In other words, under the Draft Law

²³ *Op. cit.* footnote 2.

all members of every disciplinary commission would be completely replaced every two years. This approach is not conducive to commissions' quasi-judicial functions. Individual members need time to develop diverse skills and expertise necessary for adjudicating on complex issues and should be given time and opportunity to pass that expertise on to new members. Commissions as a whole also need time and continuity in their internal expertise and practices in order to build proper case-law and maintain consistency and predictability in their decisions and procedures. **The drafters should extend the service time for individual members or/and increase a number of terms a member can serve on the same commission.**

60. Paragraph 2 of Article 74 reads that a disciplinary case is “examined for no longer than one month from the day the violation is established.” The precise meaning of this awkwardly worded provision is not entirely clear. Its most literal interpretation suggests that proceedings in a single case must not last for longer than one month - in which case the provision does not address how soon proceedings should start since the filing of a complaint. Alternatively, it could mean that the examination of a complaint must be completed within one month since its filing. In either of these scenarios (but especially in the second one), one month will be an unrealistically short period of time for many cases of a more complex nature. In Belgium, for instance, the disciplinary body is required to make a decision whether to pursue or dismiss a complaint within 6 months since the complaint is lodged.²⁴
61. At the same time, the Draft Law does not provide for a statute of limitation for disciplinary cases. By contrast, many OSCE participating States set a time limit for lodging a complaint which can typically range between one year (e.g. Bulgaria) and five years (e.g. Austria, Greece).²⁵ **The drafters should provide for a realistic timeframe for disciplinary proceedings which will be sufficient for a proper examination of even the most complex cases. Its starting point should be the filing of a complaint rather than “the day a violation is established,” since whether any wrongdoing took place is established only at the conclusion of a disciplinary proceeding and not at the beginning. The drafters should consider providing a time limit for lodging a disciplinary complaint.**
62. The Draft Law fails to provide for fair hearing guarantees in disciplinary proceedings. According to Principle 27 of the Basic Principles, “charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.”²⁶ Similar fair hearing requirements are found in Principle VI of CoE Recommendation R(2000)21.²⁷ **The Draft Law should expressly provide for advocates' right to a fair hearing in disciplinary proceedings against them, including their right to be represented by a lawyer of their choosing. To ensure adequate record of disciplinary hearings and facilitate the right to appeal, the Draft Law should expressly require that minutes be kept for all commission sittings and that disciplinary decisions be well-reasoned.**

²⁴ CCBE, *Summary of disciplinary proceedings and contact points in the EU and EEA Member States* (2016), <http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EU_LAWYERS/Position_papers/EN_EUL_20161128_Table_discipline.pdf>.

²⁵ *Ibid.*

²⁶ *Op. cit.* footnote 2.

²⁷ *Op. cit.* footnote 4.

63. Article 74(5) provides for the following types of disciplinary sanctions: notice, warning, suspension, and disbarment. The Draft Law does not expressly rank these sanctions in terms of their gravity or offer any guidance on their application. Imposed sanctions must always be proportionate to the seriousness of a disciplinary offence, and there should be consistency in how they are applied. Furthermore, for greater flexibility and nuance in selecting proportionate sanctions, it would be advisable to expand their scope to include monetary fines (which are commonly used in OSCE participating States alongside the sanctions already included in the Draft Law). **It is recommended that the drafters expressly provide for the proportionality principle in imposing disciplinary sanctions and add fines to the types of sanction that can be used.**
64. As was already mentioned in paras. 48-50 above, the Draft Law provides for an additional tier of state control over advocates' performance in the form of a licensing system. Articles 44 and 45 provide grounds for suspending licenses and revoking/terminating licenses respectively. Although the licensing authority is not defined in the Draft Law, it is presumed that this function is performed by the Ministry of Justice or, at any rate, by a state authority. Article 44 does not define the procedure for suspending an advocate's license, referring instead to unspecified "laws of the Republic of Kazakhstan". Paragraph 2 defines certain grounds for suspending one's license in addition to those that exist in other legislation (those other grounds or laws in which they are established are not specified). Several grounds defined in paragraph 2 amount to some form of professional misconduct or unsatisfactory performance, including a failure to undergo professional development training and repeated acts of providing legal aid services of sub-par quality (points 8 and 9 of para. 2). However, the evocation of these grounds is not linked to/conditioned upon a pre-existing decision by a disciplinary commission. It appears that these determinations on advocates' professional performance can be made directly by the licensing authority.
65. Article 45 regulates revocation and termination of licensing (without explaining the difference between the two terms). As in the case of suspension, the procedure for revocation/termination is not defined in the Draft Law. The list of expressly provided grounds for revocation/termination is similarly non-exhaustive. Among the grounds expressly defined in paragraph 3 of Article 45 are "gross or repeated" professional misconduct and "the inability of an advocate to perform their professional duties due to insufficient qualifications". Similarly to Article 44, it appears that these measures can be initiated by the licensing authority independently of a pre-existing determination by a disciplinary commission or a judicial authority.
66. These aspects of Articles 44 and 45 are highly problematic as, in effect, they enable the executive branch to bypass the system of independent disciplinary commissions and directly impose the most serious types of disciplinary sanctions without a fair hearing and in the absence of a transparent procedure defined in the law. Such a system is clearly incompatible with the principle of the independence of the legal profession. Under Principle 28 of the Basic Principles, "[d]isciplinary proceedings against lawyers shall be brought before *an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court*, and shall be subject to an independent judicial review."²⁸ On the question of revoking/terminating a lawyer's license specifically, the Special Rapporteur on the independence of judges and lawyers has stressed that "disbarment should only be imposed in the most serious cases of

²⁸ *Op. cit.* footnote 2.

misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.”²⁹ **ODIHR recommends a fundamental revision of the system for suspending and terminating advocates’ licensing (Articles 44 and 45). All grounds for suspending and terminating/revoking one’s license should be clearly, precisely and exhaustively defined in the Draft Law itself. All references to other legislation should be specific, i.e. they should list specific laws in which the relevant issues are additionally regulated. The Draft Law should clearly stipulate that any suspension or revocation/termination of a license which results from unsatisfactory performance, professional misconduct or other form of wrongdoing cannot be initiated in the absence of a decision of a disciplinary commission or a judicial body.**

4.6. “State bar”

67. Article 31(2) provides that “a state bar may be introduced in the Republic of Kazakhstan, with the basic principles, rules and conditions of its operation to be established by law.” The concept of a ‘state bar’ is not defined, and this provision is the only time it is referred to in the Draft Law. There is no need for a detailed discussion of this provision in the present opinion for two reasons: (i) it is unclear what the drafters mean by a ‘state bar’; and (ii) this provision, the way it is formulated, has no legal consequences and is therefore devoid of legal merit. However, it should be mentioned briefly that a *state-controlled* bar will be incompatible with international standards. The Special Rapporteur on the independence of judges and lawyers has concluded emphatically that “[s]ituations where the State, in particular the executive branch, controls all or part of a bar association, or its governing body, and where membership in such an organization is compulsory, are clearly incompatible with the principle of the independence of the legal profession.”³⁰ While the concept as such is problematic, this provision of the Draft Law does not impose any obligation on the state to create a ‘state bar’ and is not even indicative of a clear intention to do so. Nor does this provision need to be included to enable the lawmakers to establish a ‘state bar’ in future legislation, if they choose so. **It is recommended that the reference to a ‘state bar’ is removed from the Draft Law. Should the lawmakers revisit this idea in the future, they are reminded that a state-controlled bar based on mandatory membership will be clearly incompatible with international standards on the independence of lawyers.**

5. The introduction of the profession of legal consultant

68. Section 4 of the Draft Law (Articles 77-103) introduces a new category of legal professional, namely, the legal consultant. At present, legal services provided by practicing lawyers who are not advocates (hereafter ‘practicing lawyers’) are largely unregulated in Kazakhstan. From the conversations ODIHR had with the Ministry of Justice and representatives of the legal profession in November 2017 (see para. 2 above), it is understood that despite some isolated examples of successful self-

²⁹ 2016 Report, *op. cit.* footnote 20, para. 96.

³⁰ *Ibid*, para. 86.

organization and self-regulation among practicing lawyers in Kazakhstan, there are no uniform professional standards for this group. At the same time, legal services delivered by practicing lawyers are comparable in scope and character to those provided by advocates. In fact, the only type of legal service which can be performed exclusively by advocates is legal representation in criminal proceedings (which also includes proceedings related to so-called ‘administrative offenses’).

69. Therefore, the need for stronger regulation of the provision of legal services by lawyers who are not advocates cannot be called into question. Section 4 of the Draft Law purports to address this need. Whether it is best done by introducing a new category of legal professional is a matter for Kazakhstan’s policy makers. However, the specific manner in which the drafters propose to regulate this new legal profession is highly problematic. The extensive and loosely defined oversight powers granted to the executive branch are clearly incompatible with the principle of the independence of lawyers. Moreover, many essential aspects of the proposed model of self-governance do not appear well-thought-through and sufficiently developed, which casts serious doubt on its ability to produce any positive effect on the quality of legal services provided by legal consultants.
70. The technical quality of Section 4 of the Draft Law is also in need of significant improvement, as the text suffers from a number of lacunae, inconsistencies, and internal contradictions. To give but one example, Article 87 determines obligations of legal entities (e.g., law firms) that are accredited with chambers of legal consultants. The purpose, process and benefits of such accreditation are not explained anywhere in the Draft Law. In fact, Article 87 is the only time such accreditation is mentioned. It is also unexplained what effect accreditation should have on individual lawyers working for an accredited entity. **While strongly recommending a thorough revision of Section 4 in its entirety, this opinion will focus only on its most serious shortcomings.**
71. Under Article 77, a person who wishes to practice law as a legal consultant must: (i) have a law degree; (ii) have at least two years of experience as a legal professional; (iii) successfully complete a qualification examination; and (iv) be registered with a chamber of legal consultants. Since the Draft Law does not envisage any option for a legal consultant to be registered with a chamber other than by becoming its member, the last requirement should be understood as being synonymous to membership in a chamber of legal consultants. However, this is inconsistent with point 4 of paragraph 4 of Article 78 which requires chamber membership only for legal consultants who represent clients in court. **The drafters should clarify whether membership in a chamber of legal consultants is mandatory for all legal consultants or only for those who wish to represent clients in court cases. If it is the latter, the registration requirement should be removed from the definition of a legal consultant in Article 77.**
72. The bulk of the Draft Law’s provisions on legal consultants is dedicated to the functioning of chambers of legal consultants. Article 80 describes chambers as ‘self-regulated organizations’ designed to regulate the provision of legal services by legal consultants and exercise control over the performance and professional conduct of their members. Thus, the Draft Law envisages chambers exclusively as a mechanism of control and oversight. **The Draft Law should include the protection of the interests and independence of legal consultants as one of the key purposes of chambers of legal consultants. The drafters should also review and revise specific functions of chambers in order to reflect this purpose (Article 82).**

73. While Draft Law allows only one bar association per territorial unit, it does not impose any direct restrictions on the number of chambers of legal consultants or limit them to operating on the regional level (in practice, some restriction on the total number of chambers would be effected by the minimum membership requirement of 500 members under Article 80). Each chamber can operate nationally, and there is no equivalent of the Republican Bar Association which would be responsible for setting common standards for all chambers and for coordinating and overseeing their activities. Instead, each chamber would develop its own code of professional ethics (Article 82) and its own procedures and standards for admitting members (Articles 82 and 85) and for taking disciplinary action against them (Article 100). The Draft Law provides little substantive guidance on any of these crucial issues.
74. In the absence of basic common standards defined in the law and a central self-governing body that harmonizes professional standards and practice, it is highly doubtful that the self-regulation model proposed in the Draft Law will have significant positive impact on the quality of services provided by legal consultants, as chambers would be incentivized to deliberately lower their ethical standards in order to attract more members (as well as protect themselves and their current members from drastic sanctions that can be imposed by the designated state body for non-compliance with their own ethical standards – see paras. 77-78 below). Differences in professional standards and their implementation will also create a situation in which the same professional conduct may result in disciplinary action in one chamber and no consequences in another, thereby putting members of chambers that strive for higher standards of professional conduct at an arbitrary and unfair disadvantage. **ODIHR recommends a fundamental rethinking of the Draft Law’s model of self-regulation for legal consultants in order to avoid significant discrepancies in professional standards and their enforcement among different chambers and ensure that legal consultants are not subject to arbitrary and unfair differences in their treatment on such issues as admission to legal practice and disciplinary liability. However, the drafters should not seek to ensure a greater level of uniformity in professional standards and practices by increasing the role of the executive branch (the designated state body) in setting them and in overseeing the chambers, as such an approach would be against the principle of the independence of the legal profession.**
75. Disciplinary responsibility of members of chambers of legal consultants is addressed in Articles 97 and 100. The primary body responsible for taking disciplinary action is a disciplinary commission of a chamber of legal consultants. However, in the case of serious sanctions (i.e. temporary suspension and striking off the register), the commission’s recommendations must be approved by the chamber’s council. Article 97 provides that a disciplinary commission consists of a ‘legal ombudsman’ and a committee for consolidating and analyzing the practice of the disciplinary commission. However, the term ‘legal ombudsman’ is not defined, and it is not used anywhere else in the Draft Law. It can be assumed that this is a collegial body rather than a single individual, since Article 100(4) differentiates between decisions that can be made by a simple majority of commission members and those that require a qualified majority. At the same time, the Draft Law does not specify how many members a disciplinary commission should include and who can be elected (i.e. whether they have to be chosen from members of the respective chamber or whether they may also include representatives of civil society, academia, etc.).

76. This level of regulation of disciplinary commissions for legal consultants is clearly insufficient to guarantee their impartiality (compare this with the level of regulation already envisaged in the Draft Law and additionally recommended in this Opinion in respect of disciplinary commissions for advocates – see paras. 56-63 above). Coupled with the fact that each chamber would have their own code of professional ethics (see para. 73), the lack of minimum standards for disciplinary commissions’ rules of procedure will result in an unacceptable level of divergence in disciplinary practices. At the same time, a legal consultant expelled from one chamber would be prohibited from joining another chamber for three years (Article 85(4)). This would result in a clearly discriminatory situation in which the same type of professional misconduct leads to a three-year ban on the profession for some legal consultants but not for others. **The Draft Law should define the term ‘legal ombudsman’ and specify the key parameters of disciplinary commissions similarly to the Draft Law’s recommended regulation of disciplinary commissions for advocates.**
77. The impracticability of the chamber system proposed in the Draft Law is compounded by almost unfettered powers of the executive branch (the designated state body) to oversee, and interfere with, chambers’ everyday functioning. Article 103 provides that the designated state body “exercises control over ... the compliance of chambers of legal consultants with the requirements of the legislation of the Republic of Kazakhstan on legal services, rules and standards of legal service provision, the code of professional ethics.” It goes on to say that such control is “carried out by means of inspections and other methods of control.” Article 103 does not set any discernable limits to the purpose and extent of the designated body’s oversight. Its methods are also left completely to the discretion of the designated body. This would allow for an easy transformation from the oversight of chambers of legal consultants to the oversight of legal consultants themselves.
78. When the designated body establishes a violation, it issues a notice which requests the chamber to address the violation. If it is not addressed within a time limit prescribed by the designated state body, the latter may apply to the court to compel the chamber to resolve the issue or to remove the chamber from the register of chambers. The designated body appears to have a complete discretion in choosing between these two measures. As there is no requirement of proportionality and no attempt at categorizing violations, it would also seem that any violation, irrespective of its seriousness, may result in the chamber’s termination. Any protection afforded by the involvement of the judiciary in this process is likely to be illusory, since the extreme vagueness of this part of the Draft Law would deprive the court of an adequate legal framework for reviewing the legitimacy of the designated body’s decisions. What is more, the termination of a chamber will have direct and immediate impact on its individual members who will be unable practice law as legal consultants until they join another chamber. This means the designated state body has the de facto power to sanction not only chambers of legal consultants but also legal consultants themselves.
79. These considerations make Article 103 incompatible with the principle of the independence of the legal profession. **The Draft Law should be significantly more specific about the designated state body’s oversight powers with regard to chambers of legal consultants. When and how the designated body can exercise these powers should not be entirely at its discretion. The purpose, scope and methods of oversight should be defined clearly and narrowly, ensuring respect for the autonomy of chambers and minimizing any disruption to their daily operation. The independence of individual members of the chamber should be always**

respected. Special care should be taken to ensure that the oversight of chambers does not become the direct oversight of legal consultants. Any measures taken against a chamber should be proportionate. Striking off the register of chambers should be used only as a measure of last resort and only for repeated and/or serious violations. The Draft Law should address the consequences of striking a chamber off the register for its members, so that sanctioning a chamber does not transform into sanctioning individual legal consultants.

80. In conclusion, it should be noted that the increase of state regulatory and oversight powers in relation to legal professionals (advocates and other practicing lawyers) is justified by the drafters as being necessary for improving the quality of legal services and, therefore, beneficial to the public at large. It is clearly outside the realm of this Opinion to judge on the quality of legal services currently available or assess the state of the legal profession in Kazakhstan. However, it should be emphasized that any approach that juxtaposes the public interest and the independence of the legal profession, let alone sees them as potentially conflicting or opposing considerations, is fundamentally flawed. The independence of lawyers *is* in the public interest. It serves, and is derived from, the human rights of users of legal services and not their providers, specifically the rights to a fair trial and to an effective legal remedy. As made clear in the Basic Principles, “adequate protection of the human rights and fundamental freedoms to which all persons are entitled ... requires that all persons have effective access to legal services provided by an independent legal profession” (see para. 13 above). State measures that undermine the independence of the legal profession can never be in the interests of the public, and they can never amount to an improvement in the quality of legal services.

6. The importance of meaningful consultations on the Draft Law

81. OSCE participating States have committed themselves to ensuring that legislation be “adopted at the end of a public procedure” (1990 Copenhagen Document, para. 5.8)³¹ and “formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, para. 18.1).³²
82. From the conversations ODIHR had with the Ministry of Justice and various representatives of the legal community of Kazakhstan in November 2017 (see para. 2), it is evident that the drafters (the Ministry of Justice) had made an effort to reach out to legal professionals and that Kazakhstan’s professional associations had multiple opportunities to provide their input which they actively used. It would also appear that some form of a web-based consultation was conducted – or, at least, some version of the Draft Law was published online with the possibility of providing comments. These efforts on the part of the drafters as well the active position of the legal community are highly commendable.
83. However, it appears that the consultation process had significant shortcomings. Interested parties, such as the Republican Bar Association, had often been given

³¹ Available at <<http://www.osce.org/fr/odihr/elections/14304>>.

³² Available at <<http://www.osce.org/fr/odihr/elections/14310>>.

insufficient time to analyze, and comment on, the proposed versions of the draft. Important changes had been frequently made to the Draft Law in a non-transparent manner and without additional consultation. It was not always clear whether the draft available to the Bar Association and other stakeholders was the latest version. Some ODIHR interlocutors also complained that they had experienced persistent technical difficulties with providing feedback through the website on which the Draft Law was published. It was also unclear to what extent the views submitted during those consultations had been taken into account by the drafters, as there was no formal feedback mechanism to report on the outcomes of the consultations.

84. Crucially, it appears that the drafters/the Ministry of Justice had reached out only to lawyers' professional associations, legal experts, and other representatives of the legal community and that, at any rate, it is this segment of Kazakh society that provided most, if not all, of the public input. The Draft Law's direct relevance to legal professionals (legal service providers) is obvious. Nor can it be questioned that they are best placed to comment on many aspects of the functioning and organization of legal services. However, the Draft Law is also of direct and imminent importance to the public at large. After all, the primary beneficiaries of the independence of lawyers are their clients (users of legal services), and it is in their rights, including the right to a fair trial and the right to an effective legal remedy, that this principle is rooted. In addition to any other member of the public, vulnerable groups (e.g., persons with disabilities, victims of domestic violence, elderly persons, etc.) as well as NGOs representing them and other social groups (e.g., women's rights organizations) have special interest in certain aspects of the Draft Law, such as access to, and the organization of, legal aid.³³ A meaningful consultation process would have to be open to the public and organized in a way that facilitates active public participation and encourages input from a diverse range of stakeholders, including those mentioned above.
85. National practices in the organization and regulation of legal services and the legal profession are quite diverse, and on certain issues it is difficult, impossible or/and inadvisable to identify a single 'good practice' that could be recommended to all OSCE participating States. There is no single "correct" way to ensure that the legal profession is independent, accessible and capable of delivering legal services of high quality. As evidenced by the drafters' concept note attached to the Draft Law, some of the solutions envisaged in the Draft Law are based on, or inspired by, the experience of other countries. However, there is no guarantee that solutions that have worked well elsewhere will do the same in Kazakhstan and will not have unintended results, different from what the drafters sought to achieve. Such assessments and predictions can only be made on the basis of full, in-depth understanding of the country's social, political, legal and economic context.
86. Many of the choices made by the drafters appear broadly compliant with the relevant international standards. This Opinion has largely refrained from commenting on them. However, their practical implementation in the specific context of Kazakhstan might result in impermissible levels of state interference or other threats to the independence

³³ Principle 4 of the Basic Principles recommends that "[s]pecial attention should be given to assisting the poor and disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers." The Special Rapporteur on the independence of judges and lawyers has also stressed that "[i]n order to guarantee equal and effective access to legal aid to everyone, special measures should be developed and taken to ensure meaningful access to legal aid for women, children and groups with special needs." See 2013 Annual Report, UN Doc A/HRC/23/43, para. 82 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/119/35/PDF/G1311935.pdf?OpenElement>>.

of Kazakhstan's lawyers. Of particular concern are broad regulatory and oversight powers given to the executive branch on matters that are typically left to the legal profession to self-regulate in other OSCE countries (see para. 21 above). Not all of those powers are necessarily incompatible with the principle of the independence of the legal professional, and the drafters may have good reasons for introducing them. How are they likely to be implemented in the local context? What impact will they have on legal service providers and legal service users? Is the balance between state regulation and self-regulation established in the Draft Law right for Kazakhstan and not at risk of tipping towards state control of the legal profession? These questions can only be answered on the basis of comprehensive and in-depth information about all important aspects of legal service provision in Kazakhstan, both in law and in practice, and a thorough consideration of all conflicting and competing perspectives. This is why it is essential for the success of the reforms proposed in the Draft Law that they undergo broad and inclusive consultations with all interested parties conducted in an open and transparent manner and in good faith.

87. It is for national policy makers to decide how exactly such consultations are best set up. However, on the basis of recommendations made by international and regional bodies as well as practices of various OSCE countries, it is possible to formulate certain principles a consultation process must meet to be successful. Consultations should not be confined to one specific stage in the development of a law, but instead they should continue throughout the lawmaking process,³⁴ including not only when the draft is being prepared by the government but also when it is discussed in parliament. All interested parties should be given sufficient time to prepare and submit their comments and recommendations which should be determined in proportion to the complexity and size of the proposed draft law.³⁵ The state authorities conducting the consultation should provide adequate and timely feedback on the submissions made by the participants and report on the consultation's outcome.³⁶
88. **In light of these considerations, ODIHR recommends that before their adoption, all reforms proposed in the Draft Law undergo broad and inclusive consultations with all interested parties, including the public at large. Due to the Draft Law's impact on the rights of every member of Kazakh society, these consultations should be open to both providers and users of legal services, and special care should be taken to seek and encourage participation of ordinary members of the public as well as vulnerable persons who are particularly dependent on legal assistance in asserting their human rights. All interested parties should be given sufficient time to prepare and submit their comments, which for a draft law of such length and complexity should be at least one month. All participants should receive feedback on their submissions and be informed about the outcome of the consultations.**

[END OF TEXT]

³⁴ See, e.g., OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (2014), para. 74, <<http://www.osce.org/odihr/119633>>.

³⁵ See, e.g., OSCE/ODIHR, *Opinion on the Draft Law of Ukraine "On Public Consultations"*, 1 September 2016, pars 40-41, <<http://www.legislationline.org/documents/id/20027>>.

³⁶ See, e.g., *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015, <<http://www.osce.org/odihr/183991>>.

ANNEX 1:

DRAFT

**LAW
OF THE REPUBLIC OF KAZAKHSTAN ON
THE PROFESSIONAL ACTIVITIES OF ADVOCATES
AND LEGAL ASSISTANCE**

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SECTION 1. GENERAL PROVISIONS

Chapter 1. General Provisions

Article 1. The Main Definitions Used in This Law

The main definitions of this Law shall be as follows:

- 1) legal practice – qualified legal assistance, rendered professionally by attorneys in accordance with the procedure established by this Law for protection and promotion of rights, freedoms and legal interests of individuals, as well as rights and legal interests of legal entities;
- 2) for the purposes of this Law, legal assistance, including legal practice, shall be activity aimed at implementing the constitutional right of everyone for qualified legal assistance, including provision of legal services with the use of special legal knowledge and skills (hereinafter – legal assistance);
- 3) provision of legal information – a kind of legal assistance that consists in informing the public at large about the legislation of the Republic of Kazakhstan in verbal, written, electronic or visual form;
- 4) legal counselling – a kind of legal assistance, rendered to entitled individuals and legal entities in the form of verbal or written advice, covering the procedure of drafting applications, complaints, claims and other legal documents;
- 5) state-guaranteed legal assistance – legal assistance, rendered free of charge to entitled individuals and legal entities based on and in accordance with the procedure established by this Law and other legal acts of the Republic of Kazakhstan;
- 6) actors in provision of legal assistance – legal assistance providers, clients, government agencies, officials, other persons involved in provision of legal assistance;
- 7) client – an individual or a legal entity (representative), who seeks legal assistance from a legal assistance provider;
- 8) activity of legal advisers – professional activity of legal advisers aimed at providing qualified legal assistance, including provision of legal services for protection of rights, freedoms and legal interests of individuals and legal entities;
- 9) conflict of interests – a conflict between private interests of a legal assistance provider and activities related to legal assistance provision, due to which the provider may fail to render legal assistance or may render low-quality aid;
- 10) authorized government body in the sphere of legal assistance provision (hereinafter – the authorized body) – a central executive authority, arranging legal assistance provision to the public and control of legal assistance quality.

Article 2. Legislation of the Republic of Kazakhstan on Legal assistance

1. The legislation of the Republic of Kazakhstan on legal assistance shall be based on the Constitution of the Republic of Kazakhstan and consist of this Law and other pieces of legislation regulating legal assistance provision.
2. Legal assistance shall be rendered in accordance with the rules established by this Law, subject to the provisions of codes of the Republic of Kazakhstan.
3. If an international treaty ratified by the Republic of Kazakhstan sets forth rules other than those established by this Law, the rules of the treaty shall be applied.
4. Terms and procedures for rendering legal assistance by individual providers shall be established by legal acts of the Republic of Kazakhstan.

Article 3. Legal assistance Principles

Legal assistance shall be based on the principles of:

- 1) rule of law;
- 2) independence of legal assistance providers;
- 3) respect and protection of rights and freedoms of the client;
- 4) legal assistance provision in the interests of the client;
- 5) legal professional privilege;
- 6) compliance with the norms of professional conduct and ethics;
- 7) freedom in defining the extent and arrangements of legal assistance;
- 8) compliance with high quality standards of legal practice and legal assistance;
- 9) respect for colleagues;
- 10) accessibility of legal assistance.

Article 4. Definition of Legal assistance Principles

1. The principles are the fundamentals of legal assistance provision that define its content and set forth general conditions for implementation of rights and responsibilities of actors in legal assistance.
2. The legal assistance principles form an interconnected system. Each principle shall be implemented in conjunction with other principles of legal assistance provision.

Article 5. Rule of Law

Legal assistance shall be based on the principle of equality of all before the law, the duty to observe the Constitution of the Republic of Kazakhstan, this Law and other pieces of legislation of the Republic of Kazakhstan.

Article 6. Independence of Legal assistance Providers

Legal assistance providers shall be independent in the exercise of their rights and duties. Interference of the prosecution authorities, courts, other state agencies, organizations or entities in the activities of legal assistance providers shall be inadmissible unless explicitly provided for by legal acts of the Republic of Kazakhstan.

The role of associations of legal assistance providers shall be based on their respect and independence from any undue interference.

Article 7. Respect and Protection of Rights and Freedoms of the Client

Legal assistance shall be aimed at protecting and promoting rights, freedoms and legal interests of individuals, as well as lawful interests of legal entities.

In the course of legal assistance provision, it shall be prohibited to perform any actions that dishonour or degrade the client, invade his/her personal or family privacy, banking confidentiality, privacy of correspondence, phone conversations, postal, telegraphic and other messages.

Article 8. Legal assistance Provision in the Interests of the Client

Legal assistance provision shall be effective, complete and transparent in terms of possible outcomes and consequences of the provided aid, including financial costs.

The legal assistance provider shall properly fulfil the professional duties not to prejudice the interests of the client.

The choice of legal assistance arrangements shall be in the interests of the client.

The legal assistance provider shall take measures to prevent a conflict of interests in the line of professional duties.

Article 9. Legal Professional Privilege

Professional secret shall not be disclosed without client's consent.

While rendering legal assistance, the provider shall take all measures for protecting professional secret, unless otherwise prescribed by legal acts of the Republic of Kazakhstan. The duty of professional secrecy has no time limits.

Article 10. Compliance with the Norms of Professional Conduct and Ethics

Legal assistance shall be provided in full compliance with high professional and ethical norms.

The norms shall be formulated by legal assistance providers based on the common rules of conduct, morality and professional standards.

Article 11. Freedom in Defining the Extent and Arrangements of Legal assistance

The extent and arrangements of legal assistance shall be defined by the provider and shall be restricted only if so set forth in legal acts of the Republic of Kazakhstan.

Legal assistance providers shall be prohibited from engaging in activities aimed at abuse of rights and exercise of rights contrary to their purpose.

Article 12. Compliance with High Quality Standards of Legal Practice and Legal assistance

Compliance with high quality standards of legal assistance shall be ensured by applying the best practices of legal assistance provision in line with the legislation in force in the Republic of Kazakhstan.

To ensure high quality of legal assistance, it shall be rendered only persons with appropriate professional qualifications, who regularly improve their skills.

Article 13. Respect for Colleagues

Legal assistance providers shall treat their colleagues in a spirit of respect, justice and cooperation.

Legal assistance shall be based on respect for court and judicial procedure.

Article 14. Accessibility of Legal assistance

Everyone has the right to qualified legal assistance.

Where provided for by the law, legal assistance shall be rendered free of charge.

Article 15. Types of Legal assistance

Legal assistance shall be provided as:

- 1) legal information;
- 2) legal counselling;
- 3) protection and representation of interests of individuals and legal entities in courts, prosecuting agencies, other government agencies and non-governmental organizations in the cases and the manner established by this Law and other legal acts of the Republic of Kazakhstan;
- 4) other legal actions, aimed at protecting lawful interests of the client in cooperation with any persons involved in the current or potential legal relations with the client.

Provision of legal information, legal counselling, protection and representation of rights of individuals and legal entities are the minimum social standards in the sphere of state-guaranteed legal assistance in accordance with the Law of the Republic of Kazakhstan “On Minimum Social Standards and Their Guarantees”.

Article 16. Forms of Legal assistance

Forms of legal assistance shall be as follows:

- 1) paid legal assistance;
- 2) state-guaranteed legal assistance;
- 3) comprehensive social legal assistance (pro bono).

Article 17. Provision of Paid Legal assistance

Paid legal assistance shall be provided to individuals and legal entities for remuneration pursuant to agreement, unless otherwise stipulated by this Law and legal acts of the Republic of Kazakhstan.

Article 18. State-Guaranteed Legal assistance

Pro bono legal assistance provided to individuals and legal entities entitled to receive it under and in accordance with this Law and other legal acts of the Republic of Kazakhstan, shall be defined as state-guaranteed legal assistance.

Article 19. Comprehensive Social Legal assistance

1. Comprehensive social legal assistance is pro bono legal support, provided to persons referred to in paragraph 2 of this Article, from the moment of application up to the final resolution of the case (legal situation) in accordance with the procedure established by legal acts of the Republic of Kazakhstan.

The extent and procedure for rendering comprehensive social legal assistance shall be established by the Chamber of Legal Advisers and the Republican Bar Association.

Information about the extent and procedure for rendering comprehensive social legal assistance shall be submitted to the authorized body.

Comprehensive social legal assistance shall be provided as part of social responsibility on the voluntary basis.

2. Comprehensive social legal assistance may be rendered to:

- 1) persons in difficult situation in accordance with the Law of the Republic of Kazakhstan “On Special Social Services”;
- 2) persons entitled to targeted social assistance;
- 3) participants of the Great Patriotic War and persons equated to them;
- 4) disabled persons of groups I and II;
- 5) old-age pensioners;
- 6) elderly and disabled persons residing in common medical and social institutions for elderly and disabled persons;
- 7) other persons in difficult social and financial situation.

Comprehensive social legal assistance may not be provided in connection with commercial disputes within the framework of civil legal proceedings.

3. If legal assistance has led to a positive outcome in the form of monetary compensation for the client, the provider, given the client’s consent, has the right to seek remuneration amounting maximum to ten percent of imposed financial penalties, as well as reimbursement of costs related to the state fee payment.

4. The State shall encourage providers of comprehensive social legal assistance by conferring departmental awards on the entities making a significant contribution to development of comprehensive social legal assistance in accordance with the procedure approved by the Government of the Republic of Kazakhstan.

Article 20. Legal assistance

Legal assistance shall be provided by:

- 1) state agencies within the scope of their competence;

- 2) legal assistance providers (attorneys, notaries, private court bailiffs, legal advisers);
- 3) legal assistance providers not affiliated with membership-based non-profit organizations of legal assistance providers, the Chambers of Legal Advisers.

Article 21. Competence of the Government of the Republic of Kazakhstan in the Sphere of Legal assistance

The Government of the Republic of Kazakhstan shall:

- 1) develop the main directions of the state policy in the sphere of legal assistance provision;
- 2) determine the amount of remuneration for legal assistance rendered by an attorney and reimbursement of expenses related to legal counselling, defence and representation, as well as conciliation procedures;
- 3) perform other functions assigned to it by the Constitution, this Law, other legal acts of the Republic of Kazakhstan and Acts of the President of the Republic of Kazakhstan.

Article 22. Competence of the Authorized Body in the Sphere of Legal assistance

The authorized body shall:

- 1) ensure implementation of the state policy in the sphere of legal assistance;
- 2) coordinate activities of legal assistance providers;
- 3) draft laws and regulations on legal assistance provision;
- 4) monitor the legislation of the Republic of Kazakhstan in the sphere of legal assistance, as well as extent and quality of provided aid;
- 5) maintain international cooperation in the sphere of legal assistance;
- 6) agree legal assistance standards;
- 7) agree quality criteria of legal assistance provision;
- 8) establish and approve quality criteria of state-guaranteed legal assistance provision;
- 9) administer budget-funded programs on all kinds of state-guaranteed legal assistance;
- 10) ensure functioning and development of state-guaranteed legal assistance system;
- 11) ensure publication of information about the system and deliverables of state-guaranteed legal assistance in nationwide print periodicals and on the internet at least once a year;
- 12) develop and approve the procedure for keeping records of state-guaranteed legal assistance in the form of legal counselling services provided by attorneys;
- 13) approve the rules of remuneration for legal assistance provided by attorneys reimbursement of expenses related to legal counselling, defence and representation, as well as conciliation procedures;
- 14) control and supervise quality of provided state-guaranteed legal assistance;
- 15) publicize information about legal assistance providers, mechanisms, grounds and conditions of legal assistance provision;
- 16) develop and approve the auditing procedure for Chambers of Legal Advisers and the Republican Bar Association;
- 17) develop and approve the standard Charter of the Chamber of Legal Advisers;
- 18) maintain the Register of Chambers of Legal Advisers;
- 19) approve the procedure for maintaining the Register of Chambers of Legal Advisers;
- 20) develop and approve a standard professional indemnity insurance contract for attorneys upon consultation with the National Bank of the Republic of Kazakhstan;
- 21) develop and approve a standard professional indemnity insurance contract for legal advisers upon consultation with the National Bank of the Republic of Kazakhstan;
- 22) perform other functions assigned to it by the Constitution, this Law, other legal acts of the Republic of Kazakhstan and Acts of the President of the Republic of Kazakhstan.

SECTION 2. STATE-GUARANTEED LEGAL ASSISTANCE

Chapter 2. The System of State-Guaranteed Legal assistance

Article 23. Providers of State-Guaranteed Legal assistance

State-guaranteed legal assistance shall be rendered by attorneys and funded from the state budget as prescribed by the legislation of the Republic of Kazakhstan.

In cases set forth in this Law and other legal acts of the Republic of Kazakhstan, state-guaranteed legal assistance may be rendered by other persons free of charge.

Article 24. Persons Entitled to Receive State-Guaranteed Legal assistance

1. All individuals and legal entities shall be entitled to receive state-guaranteed legal assistance in the form of legal information free of charge.
2. State-guaranteed legal assistance, set forth in subparagraphs 2) and 3) of Article 15 of this Law, shall be rendered to persons entitled to receive free state-guaranteed legal assistance in the cases and the manner prescribed by the legislation of the Republic of Kazakhstan on administrative offences, criminal and civil procedures and Section 3 of this Law.
3. Persons referred to in paragraphs 1 and 2 of this article shall be entitled to receive state-guaranteed legal assistance in the territory of the Republic of Kazakhstan irrespective of their place of residence and location.
4. In the interests of persons seeking state-guaranteed legal assistance, their representatives may apply for such aid in accordance with the procedure established by law.

Article 25. Rights and Responsibilities of Persons Seeking State-Guaranteed Legal assistance

1. Persons seeking state-guaranteed legal assistance shall have the right to:
 - 1) equal access to state-guaranteed legal assistance;
 - 2) receive information about their rights, responsibilities and conditions of rendering state-guaranteed legal assistance;
 - 3) seek free legal assistance from providers of state-guaranteed legal assistance;
 - 4) receive state-guaranteed legal assistance or refuse from it as statutorily required in the Republic of Kazakhstan;
 - 5) appeal against the actions or omissions of providers of state-guaranteed legal assistance in accordance with the procedure prescribed by this Law and legislation of the Republic of Kazakhstan;
 - 6) confidentiality of the issue in connection with which state-guaranteed legal assistance has been rendered.
2. Persons seeking state-guaranteed legal assistance, listed in subparagraphs 2) and 3) of Article 15 of this Law shall:
 - 1) present documents confirming their right to state-guaranteed legal assistance; a list of the documents shall be approved by the authorized body;
 - 2) notify promptly about a change of circumstances influencing conditions of rendering state-guaranteed legal assistance;
 - 3) ensure adequacy of information conditioning the need for state-guaranteed legal assistance.

Article 26. Procedure for Rendering State-Guaranteed Legal assistance by Individual Providers

Government agencies shall provide state-guaranteed legal assistance in the form of legal information within the scope of their competence according to the procedure established by Law of the Republic of Kazakhstan “On Access to Information”.

The procedure for rendering state-guaranteed legal assistance by private court bailiffs while handling socially significant cases shall be established by Law of the Republic of Kazakhstan “On Enforcement Proceedings and Status of Bailiffs”.

The procedure for rendering state-guaranteed legal assistance by notaries shall be established by Law of the Republic of Kazakhstan “On Notaries”.

Article 27. Procedure for Rendering State-Guaranteed Legal assistance by Attorneys

1. Attorneys, as providers of state-guaranteed legal assistance, shall render such aid to individuals in the cases and the manner prescribed by this Law and other legal acts of the Republic of Kazakhstan.

2. Engagement of attorneys in provision of state-guaranteed legal assistance shall be ensured by the bar association of the respective region, the city of national importance, and the capital city.

Provision of state-guaranteed legal assistance by attorneys in rural communities shall be ensured by the bar association of the respective region.

3. Criteria for selecting attorneys for provision of state-guaranteed legal assistance shall be approved by the Republican Bar Association.

Attorneys rendering comprehensive social legal assistance shall have priority right for being included in the list of attorneys participating in the system of state-guaranteed legal assistance.

Bar associations of regions, cities of national importance and the capital city shall submit the list of attorneys participating in the system of state-guaranteed legal assistance to the territorial justice agency on the annual basis on or before December 1.

The list of attorneys participating in the system of state-guaranteed legal assistance may be formed automatically with the help of an updatable unified attorney information system.

The list shall indicate numbers and dates of issuance of legal practice licenses, organizational forms of legal practice, names and places of legal practice.

The list of attorneys shall be updated annually on or before December 1.

The territorial justice agency shall publish the list of attorneys participating in the system of state-guaranteed legal assistance annually, on or before December 25, in a printed periodical distributed in the respective region, the city of national importance and the capital city, as well as on its website.

4. The territorial justice agency shall conclude written agreements on provision of state-guaranteed legal assistance with attorneys annually, on or before December 15.

The form of the agreement, developed and approved by the authorized body with due account for recommendations of the Republican Bar Association, shall determine responsibilities of the attorneys and conditions for comprehensive provision of legal assistance to the population of the respective region, the city of national importance and the capital.

5. Attorneys shall report on rendered state-guaranteed legal assistance to their respective bar association on the monthly basis, no later than the 5th day of the month next to the reported. The form of the report shall be approved by the authorized body with due count for recommendations of the Republican Bar Association.

6. The bar association of the region, the city of national importance, the capital city shall submit a general report on state-guaranteed legal assistance provided by attorneys to the territorial justice agency. The report shall be submitted on the annual basis on or before July 5 and January 5 according to the form approved by the authorized body with due account for recommendations of the Republican Bar Association.

The general report of the bar association shall contain information about provision of state-guaranteed legal assistance in rural communities.

Article 28. Denial of State-Guaranteed Legal assistance

1. State-guaranteed legal assistance in the form of legal information shall be denied if the submitted application has no legal nature.
2. State-guaranteed legal assistance in the form of legal counselling and representation shall be denied in the presence of one of the following conditions:
 - 1) the applicant does not fall under the category of persons entitled to receive state-guaranteed legal assistance under paragraph 2, Article 24 of this Law;
 - 2) the application has no legal nature.
3. Denial of state-guaranteed legal assistance shall be motivated and may be appealed against in the authorized body.

In case of a failure to settle the dispute, the decision of the authorized body may be appealed in court.

Article 29. Financing of State-Guaranteed Legal assistance

State-guaranteed legal assistance shall be financed from the state budget in accordance with the procedure established by the legislation of the Republic of Kazakhstan.
The amount and procedure of remuneration for services related to provision of state-guaranteed legal assistance shall be defined by the Government of the Republic of Kazakhstan.

Article 30. Monitoring of Compliance with the Law of the Republic of Kazakhstan on State-Guaranteed Legal assistance

The authorized body shall monitor compliance with the law of the Republic of Kazakhstan on state-guaranteed legal assistance.

SECTION 3. LEGAL PRACTICE

Chapter 3. The Bar and the Status of Attorneys

Article 31. The Role of the Bar

1. The Bar in the Republic of Kazakhstan should seek to promote realization of the right to judicial protection of rights and freedoms and the right to qualified legal assistance guaranteed by the State and enshrined in the Constitution of the Republic of Kazakhstan, as well as to promote peaceful settlement of disputes.
2. The Bar shall organize activities of attorneys related to defence in criminal and administrative cases, representation in criminal, civil and administrative cases, as well as other kinds of legal assistance for the purpose of protection and exercise of rights, freedoms and legal interests of individuals and rights and lawful interests of legal entities.

Legal assistance rendered by attorneys within the framework of legal practice shall not be regarded as entrepreneurship.

The State Bar may be established in the Republic of Kazakhstan with fundamental principles, rules of procedure and charter established by law.
4. Power of an attorney to conduct a concrete case shall be confirmed by warrant or letter of attorney in compliance with the procedural legislation.
5. Attorneys shall have the right to attend court hearings in robes.

The form and description of the robes shall be developed and approved by the Republican Bar Association upon consultation with the authorized body.

Article 32. Unified Information System of Attorneys

The unified information system of attorneys shall be an information system designed for automation of legal practice, generation of timely and reliable reports on activities of attorneys, interaction of territorial bar associations with the Republican Bar Association and the authorized body.

Article 33. Attorney in the Republic of Kazakhstan

1. An attorney is a citizen of the Republic of Kazakhstan who has a higher legal education and a licence enabling him/her to engage in legal practice. He/she must be a member of the Bar and render qualified legal assistance within the framework of legal practice regulated by this Law.

2. A person cannot be an attorney if he/she has proved to be, according to the established procedure, legally incapable or insufficiently capable, has unexpunged or unspent conviction.

A person also cannot be an attorney if he/she has been:

released from criminal responsibility based on paragraphs 3), 4), 9), 10) and 12) of the first part of Articles 35 or 36 of the Criminal Procedures Code of the Republic of Kazakhstan within three years after the onset of such events;

dismissed from military service, prosecutor's office, other law-enforcement agencies, special state agencies and court, or from the bar association for being unfit for the position;

dismissed from state service for commission of a corruption-related offence, commission of an offence as a member of an organized criminal group or for other reasons within three years after the onset of such events;

disbarred;

deprived of a notary license;

deprived of a private bailiff's license;

excluded from the Register of the Chamber of Legal Advisers for being unfit for the position less than three months ago;

disbarred for reasons set forth in paragraph 3 and subparagraphs 3), 4) and 5) of paragraph 5, Article 45 of this Law within three years from the onset of such events.

Article 34. Rights and Responsibilities of an Attorney

1. An attorney shall be entitled to render any kind of legal assistance to a person seeking such aid.

2. An attorney shall, on his/her own behalf, sign legal assistance agreement with the person seeking such aid.

3. While acting as defender or representative, an attorney, in accordance with procedural law, shall be entitled to:

1) defend and represent interests and rights of persons seeking legal assistance in all courts, government agencies and other agencies and organizations authorized to deal with corresponding issues;

2) request and receive from all government agencies and non-governmental organizations information necessary for carrying out his/her professional duties;

3) collect independently factual data necessary for rendering legal assistance and present such data to government agencies and officials;

4) have access to materials related to the person seeking aid, including service documents, investigation and court files, and record information contained in those documents in any manner not prohibited by law;

5) from the moment of admission to the case, meet his/her client in conditions ensuring privacy without any restrictions as to frequency and duration of the meetings;

6) request, on a contractual basis, expert opinion for clarifying issues that arise in connection with legal assistance provision and require expertise in science, technology, art and other spheres;

7) file motions in the prescribed manner, submit complaints against actions (omissions) of officials of justice, prosecution, inquiry and investigative agencies and court, as well as other officials prejudicing rights and legal interests of persons seeking legal assistance;

8) have access to information representing state secret, as well as information containing military, commercial, service and other legally protected secrets if this is necessary for defence and representation in inquiry, investigation and court, as prescribed by law;

9) use all legal means and forms of protecting rights and legal interests of persons seeking legal assistance;

10) carry out conciliation procedures;

11) render comprehensive social legal assistance;

12) carry out other activities not contradicting the legislation in force.

4. No government agency or official may deny an attorney the right to represent interests of a person seeking legal assistance, except as otherwise prescribed by legislation of the Republic of Kazakhstan.

An attorney shall have the right of free access to administrative buildings of courts, prosecutor's office and bodies conducting criminal proceedings, according to the established procedure upon the presentation of attorney's ID card.

Attorney's access to confinement and prison facilities shall be in line with the established access mode.

5. An attorney shall have the right to state-guaranteed social protection covered by the compulsory social insurance.

The attorneys shall pay the social insurance fees in compliance with the law in force.

An attorney shall have the right to retirement insurance in accordance with the legislation of the Republic of Kazakhstan.

6. An attorney shall be obliged to:

1) fulfil his/her professional duties in compliance with the Constitution of the Republic of Kazakhstan, this Law, legislation of the Republic of Kazakhstan on legal assistance, other laws of the Republic of Kazakhstan;

2) fulfil the oath of the attorney of the Republic of Kazakhstan, the Code of Professional Ethics of Attorneys approved by the Republican Bar Association;

3) abide by decisions of bodies of the respective bar association, the Republican Bar Association;

4) apply the legal assistance principles established by this Law in his/her professional activity;

5) be a member of a bar association;

6) maintain professional liability insurance;

7) provide to the client (proxy giver) information about membership in a bar association;

8) notify the client (proxy giver) about inability to render legal assistance in view of impeding circumstances;

9) ensure integrity of documents received from the client (proxy giver) and third persons in the course of legal assistance provision;

10) present a certificate of insurance upon client's (proxy giver's) request;

11) sign a non-disclosure agreement with the client (proxy giver) if the latter does not object to it;

12) keep secret information obtained in connection with legal assistance provision and do not disclose it without the consent of the person seeking legal assistance;

13) engage in any legal activities necessary for establishing factual circumstances and protecting rights, freedoms and legal interests of the client (proxy giver);

14) present a report on implementation of the written legal assistance agreement upon client's (proxy giver's) request;

15) store documents used for legal assistance provision in hard or soft copy or as electronic documents during three years from completion of legal assistance provision;

16) continuously improve his/her professional skills;

17) within one month from the admission to the bar association and establishment of a commercial organization, hand under fiduciary management his/her shares (block of shares) in equity capitals of commercial organizations and other income generating assets, except legally owned money and hired property. A fiduciary management agreement shall be subject to notarization. An attorney shall not hand under fiduciary management his/her bonds, participation units of open and interval mutual funds. An attorney shall have the right to receive income from property handed under fiduciary management;

18) perform other duties prescribed by legal acts of the Republic of Kazakhstan and the legal assistance agreement.

7. An attorney shall be prohibited from rendering legal assistance in case of a conflict of interests.

An attorney shall be obliged to abstain from rendering legal assistance in the presence of: a conflict of interests of the client (proxy giver) and the attorney, his/her near of kin, and also under other circumstances representing a conflict of interests; reasons stipulated by the procedural legislation of the Republic of Kazakhstan.

8. An attorney shall be prohibited from taking up a legal position worsening the situation of the person seeking legal assistance, using his/her authorities in the prejudice of the person, whose interests he/she defends or represents.

9. An attorney may not reject the assumed commitment in a criminal case, and if a court passes a sentence, which is wrong in the opinion of the client or the attorney, the latter shall appeal against it in the prescribed manner.

An attorney may reject an assumed commitment if provision of legal assistance is at conflict with his/her moral values.

10. An attorney shall be prohibited from holding a government employment and engaging in commercial activities, holding any other paid office, except for being a board member in a commercial organization, being elected or appointed arbitrator for resolving disputes through arbitration, as well as being engaged in teaching, scientific or creative activities.

An attorney shall have the right to be elected to a paid elective or appointive office in a bar association, Republican Bar Association and international public bar associations.

Article 35. Code of Conduct of Attorneys

While rendering legal assistance an attorney shall observe the following rules of conduct:

- 1) exercise his/her rights and responsibilities in good faith;
- 2) behave correctly in respect of officials considering legal issues;
- 3) prevent unjustified protraction of a case, illegal methods of legal assistance provision and fraud, forming and limiting his/her professional conduct in accordance with rules and legal interests of the person seeking legal assistance;
- 4) remain loyal to the interests of the person seeking legal assistance and to abstain from any actions prejudicing his/her interests.

Article 36. Guarantees of Legal Practice

1. Any interference in legal practice, carried out in compliance with the law, or obstruction of such practice by any means shall be prohibited.

2. It shall be prohibited to identify an attorney with a person, to whom he/she renders legal assistance.

3. It shall be prohibited to question, claim or demand from an attorney, his/her assistant, his/her intern, a person being in labour relationship with the attorney, a legal advice office, a law firm, heads or employees of the council of a bar association, as well as from a person, whose license to practice law has been revoked or suspended, or to try to obtain by any other way information, materials related to legal assistance provision without the consent of the attorney or his/her client (proxy giver), except as otherwise provided by legislative acts of the Republic of Kazakhstan.

4. Government agencies, officials may not deny an attorney the right to meet his/her client in conditions ensuring privacy without any restrictions as to frequency and duration of the meetings;

5. Attorney's paperwork, other related materials and documents, as well as attorney's property, including mobile communication, audio and computer equipment shall not be subject to vetting, examination, seizure, forfeiture and inspection except when special measures and temporary restrictions are introduced for the period of an antiterrorist operation or in other cases prescribed by the legislation of the Republic of Kazakhstan.

6. An attorney shall have a guaranteed right to exercise legal practice safely according to the procedure established by law.

7. Prosecuting agencies and officials shall notify an attorney about his/her necessary participation in investigative or other procedural actions as provided for by the procedural law within a timeframe agreed with the attorney.

8. Government agencies, local authorities, legal entities shall, within ten working days, offer a written response to attorney's written request related to provision of legal assistance in a concrete case.

An attorney may be denied requested information if:

- 1) he/she fails to comply with the procedure for request preparation and submission;
- 2) the entity receiving the request does not hold necessary information;
- 3) information has been requested for purposes not related to the provision of legal assistance to the client (proxy giver);
- 4) requested information is classified.

9. Violation of rights and guarantees related to legal practice shall entail liability in accordance with the legislation of the Republic of Kazakhstan.

Article 37. Professional Indemnity Insurance of Attorneys

1. An attorney shall effect professional indemnity insurance in respect of claims arising from provision of legal assistance in a manner prejudicial to client's interests.

An attorney may not render legal assistance in the absence of professional indemnity insurance agreement.

2. Subject matter of professional indemnity insurance are property interests of the insured person (policyholder) related to his obligation to compensate harm done to third persons by his/her activity as prescribed by law.

3. Insured event in professional indemnity insurance of attorneys is the onset of civil liability of the policyholder for harm done to third persons by professional errors he/she has made while rendering legal assistance to such persons.

For the purposes of this article, professional errors shall be:

- 1) breaches of procedural deadlines;
- 2) improper completion of documents;
- 3) failure to notify the third persons about consequences of performed legal actions, causing harm to such persons;
- 4) loss or damage of documents received by the insured person (policyholder) from the client (proxy giver) for legal assistance provision;

5) illegal disclosure of information covered by attorney-client privilege.

Professional indemnity insurance agreement may set forth other actions (omissions) causing harm to property interests of third persons as a result of legal assistance rendered by the insured person.

4. An insured event shall be considered to have occurred if harm done to the third person is a result of unintended breach of professional duties by the insured person (policyholder).

5. The sum insured under attorney's professional indemnity insurance shall be determined by policy provisions. For attorneys operating in cities of national importance and the capital city the sum shall amount at least to 1000 monthly calculation indices, while for other attorneys - at least to 500 monthly calculation indices, established by the law on the republican budget for the respective fiscal year as per the date of effectuation of professional indemnity insurance of attorneys.

The procedure and other conditions of professional indemnity insurance of attorneys shall be determined by agreement of the parties based on a standard form professional indemnity insurance of attorneys.

Article 38. Attorney-Client Privilege

1. Attorney-client privilege covers the fact of reference to an attorney, the content of verbal and written communication with the person seeking legal assistance and other persons, information about character and outcomes of actions performed in the interests of the person seeking legal, as well as other information related to legal assistance provision.

2. Attorneys, their assistants, interns, employees of the council of a bar association, a legal advice office, a law firm, as well as a person, whose license to practice law has been revoked or suspended, may not disclose and use in their private interests or interests of third persons any information obtained in connection with legal assistance provision.

3. An attorney, who discloses information covered by attorney-client privilege without the consent of the person seeking legal assistance, shall be held liable in accordance with the law.

4. Provision of information and data to a financial monitoring authority in accordance with the Law of the Republic of Kazakhstan "On Combating Legalization (Laundering) of Illegally Gained Income and Financing of Terrorism" shall not be regarded as breach of attorney-client privilege.

5. Attorney-client privilege shall not have any time limitations.

6. Attorneys, their assistants, interns, employees of the council of a bar association, a legal advice office, a law firm shall take necessary measures to maintain attorney-client privilege, including its protection from unauthorized access.

Article 39. Attorney's Assistants and Interns

1. Attorneys may have assistants and interns.

2. Assistant attorneys may work on the contractual basis in a legal advice office, a law firm or an office of an attorney engaged in individual practice.

An assistant attorney may fulfil attorney's assignments following his/her instruction and under his/her responsibility.

3. An intern shall be a citizen of the Republic of Kazakhstan who has higher legal education. The purpose of internship consists in obtaining professional knowledge and practical skills of legal practice.

A person who meets the requirements set forth in paragraph 2, Article 33 of this Law and is willing to undertake internship, shall file to the council of a bar association an application for admission to internship with attached documents, listed in the Internship Regulation for Attorneys, developed and approved by the Republican Bar Association upon consultation with the authorized body.

4. Following examination of the application, the council of the bar association shall pass a decision on:

- 1) admission to internship; or
- 2) denial of admission to internship.

A decision on admission to internship shall be passed within five working days.

5. Excessive number of recruited interns may not be a reason for denying admission to internship.

6. Internship shall be led by an attorney having at least five-year working experience and shall last from six to twelve months. An attorney may have maximum two interns at the same time. The period of internship shall be included in the length of service in the legal profession. During internship, an intern may be hired as assistant attorney based on a labour contract.

7. Internship shall be organized by the council of the bar association in accordance with the Internship Regulations for Attorneys, developed and approved by the Republican Bar Association upon consultation with the authorized body.

Following consideration of internship materials, the council of the bar association shall decide for or against approving the internship certificate.

The internship certificate shall be valid during three years from its approval by the council of the bar association.

A decision against approving the internship certificate shall be motivated. The decision against approving the internship certificate, passed by the council of the bar association, may be appealed in the Republican Bar Association.

In case of a failure to settle the dispute, the decision of the Republican Bar Association may be appealed in court.

A person, who has failed to pass internship, shall be admitted to internship again on general grounds.

8. Persons, who have terminated judicial powers on the grounds set forth in subparagraphs 1), 2), 3), 9), 10) and 12), paragraph 1, Article 34 of the Constitutional Law of the Republic of Kazakhstan “On the Judicial System and the Status of Judges of the Republic of Kazakhstan” shall not be admitted to internship.

9. Assistant attorneys and interns may not engage in legal practice independently.

Article 40. Certification Commission for Applicants for Attorney’s Position

1. Persons, who have successfully passed internship, shall be certified by a commission for certification of applicants for attorney’s position (hereinafter Applicant Certification Commissions) under territorial justice agencies of regions, cities of republican importance and the capital city.

The Applicant Certification Commission shall consist of seven members, including three attorneys, nominated by the General Meeting of members of bar associations of regions, cities of national importance and the capital city, for the period of certification.

Composition and regulations of the Applicant Certification Commission shall be confirmed by orders of the Minister of Justice of the Republic of Kazakhstan.

2. The categories of persons to be exempted from certification include:

- 1) those who have passed qualification examination in the Qualifications Commission Under the Supreme Judicial Council of the Republic of Kazakhstan; have successfully completed internship in court and received good references from a regional court in bank or an equal court;

- 2) those who have terminated judiciary powers on the grounds set forth in subparagraphs 1), 2), 3), 9), 10) and 12), paragraph 1, Article 34 of the Constitutional Law of the Republic of Kazakhstan “On the Judicial System and the Status of Judges of the Republic of Kazakhstan”;

3) persons dismissed from prosecution and investigation agencies, who have at least ten-year experience of work as prosecutors or investigators, except for those who have been dismissed for being unfit for their positions;

3. The main tasks of the Applicant Certification Commission shall be:

1) to ensure quality selection of applicants for attorney's license;

2) to ensure openness and transparency of meetings.

4. Meetings of the Applicant Certification Commission may be attended by representatives of mass media, the Republican Bar Association, members of the Bar.

5. In the interests of openness and transparency, meetings of the Applicant Certification Commission shall be audio- and/or video recorded or written shorthand in an appropriate manner. Shorthand reports, audio- and/or video records of meetings shall be attached to the minutes and stored together with the commission's materials.

Article 41. Procedure and Conditions of Certification

1. The procedure and conditions of certification of applicants for attorney's position shall be determined by rules confirmed by the authorized body.

2. Upon completion of internship, an applicant for attorney's position shall apply to the Applicant Certification Commission for admission to certification and shall submit documents prescribed by the legislation of the Republic of Kazakhstan through the Government for Citizens Public Corporation, e-government's web-portal or through the Unified Information System of Attorneys.

While filing an application, an applicant for attorney's position may appoint the place, time and language (Kazakh or Russian) of certification.

3. In case of improper completion of documents or submission of incomplete package of documents, territorial justice agencies of regions, cities of national importance and the capital city shall return the application and the documents to the applicant without examination within five working days from the day of their submission through the Government for Citizens Public Corporation, e-government's web-portal, with written explanation of reasons of the return.

Following examination of materials, the Applicant Certification Commission shall pass a motivated decision for or against admission to certification.

If an application has been filed through the Unified Information System of Attorneys, data compliance with all requirements to be met by attorneys shall be checked automatically using integrated database resources.

An applicant who fails to meet the requirements set by this Law shall be denied admission to certification.

The territorial justice agencies of regions, cities of national importance and the capital city shall notify the applicant about denial of admission to certification within five days from the day of application.

4. The territorial justice agencies of regions, cities of national importance and the capital city shall notify the applicant admitted to certification about place, day, time and procedure for certification within ten working days before certification.

If an application has been filed through the Unified Information System of Attorneys and an applicant meets all requirements to be met by attorneys, the Unified Information System shall automatically generate a list of applicants for certification and confirm place, day, time, language (Kazakh or Russian) and procedure for certification.

5. The certification shall be held semi-annually.

6. The certification shall consist of two stages:

1) a comprehensive computer-based testing of knowledge of the legislation of the Republic of Kazakhstan and psychological readiness to practice law;

2) practical tasks in analysing circumstances of a case using necessary sources.

7. An applicant who receives a passing grade in the comprehensive computer-based testing, set by the authorized body, shall be admitted to the second stage of certification.

8. The comprehensive computer-based testing shall apply tasks from the uniform bar examination.

When the Unified Information System of Attorneys is used, the content of the comprehensive computer-based testing shall be generated automatically, using tasks from the tasks of the uniform bar examination.

Tasks of the uniform bar examination shall be generated by the authorized body with the contribution of experts selected through a competition in accordance with the procedure established by the legislation of the Republic of Kazakhstan.

9. The content of the practical task for the certification shall be generated independently by the Republican Bar Association.

Representatives of the Republican Bar Association shall offer a number of practical tasks exceeding the number of applicants. The content of the practical tasks shall be confidential and shall not be subject to disclosure.

10. Following the second stage of certification, the Applicant Certification Commission shall pass a motivated decision for or against certification of applicants.

A decision of the Applicant Certification Commission may be appealed in the authorized body.

In case of a failure to settle the dispute, the decision of the authorized body may be appealed in court.

The certification decision shall be valid for six years from the moment of its adoption.

11. While passing the tests an applicant may not use reference and special literature, other kind of literature, means of communication and any records, except for hard copies of codes and laws of the Republic of Kazakhstan that may be used during the second stage of certification.

If an applicant infringes these requirements, the Applicant Certification Commission shall exclude him/her from the current certification.

An excluded applicant shall be entitled to apply for certification repeatedly after the expiry of three months from the date of exclusion.

Article 42. License to Practice Law

1. Licensing an attorney means admitting him/her to practice law. A licensing authority shall issue licenses to applicants who have successfully passed internship and certification in line with the procedures and conditions prescribed by the legislation of the Republic of Kazakhstan.

2. The licensing authority shall maintain an up-to-date register of licensed attorneys and ensure publication of the register data and the list of practicing attorneys on its website.

Article 43. Denial of a License

A license may be denied on the grounds set forth in the Law of the Republic of Kazakhstan “On Permits and Notifications”.

Article 44. Suspension of a License to Practice Law

1. The procedure for suspending a license to practice law shall be established by the legislation of the Republic of Kazakhstan.

2. Apart from the general grounds set forth in the legislation of the Republic of Kazakhstan, a license to practice law shall be suspended for the period and in the cases when a person:

1) holds government employment;

- 2) exercises powers of a Member of Parliament of the Republic of Kazakhstan, a member of a maslikhat, operating on a continuous or a full-time basis and funded through the budget;
 - 3) does compulsory military service;
 - 4) is engaged in commerce or other paid activities except for teaching, scientific or creative activities;
 - 5) can not exercise powers of an attorney based on his/her statement indicating the term of their suspension;
 - 6) undergoes proceedings for revoking his/her license to practice law;
 - 7) has been indicted as a criminal defendant;
 - 8) has failed or refused to undertake training (skill enhancement);
 - 9) systematically (three and more times during twelve calendar months successively) rendered state-guaranteed legal assistance that failed to meet quality criteria for state-guaranteed legal assistance.
3. A decision to suspend a license shall be made by the licensing authority upon recommendations from territorial justice agencies of regions, cities of national importance and the capital city, disciplinary boards of the Republican Bar Association and regional bar associations.
- The licensing authority's decision to suspend a license shall offer reasons and period of suspension of the license to practice law. The suspension of the license to practice law shall entail disbarment from the day on which the licensing authority decided to suspend the license.
4. A license to practice law shall be suspended for six months in case of systematic (three and more times during twelve calendar months successively) violation of the Law of the Republic of Kazakhstan "On Combating Legalization (Laundering) of Illegally Gained Income and Financing of Terrorism", as well as on the grounds set forth in subparagraph 9), paragraph 2 of this article.
5. A license to practice law, suspended on the grounds set forth in paragraph 2 of this article, shall be renewed within ten calendar days upon the attorney's application, based on an order of the licensing authority and documents certifying termination of the grounds for its suspension. The attorney, the bar association, central offices of law-enforcement agencies and the authorized body for organizational and logistical support of courts shall be notified about the license renewal.
6. A decision to suspend or renew the license to practice law shall be published on the licensing authority's website. The attorney, the bar association, central offices of law-enforcement agencies and the authorized body for organizational and logistical support of courts shall be notified about the decision.
7. A decision to suspend a license to practice law or denial to renew it may be appealed in court.
8. When appropriate, a bar association may, with consent of a client (proxy giver), take measures to provide legal assistance to the client (proxy giver), whose attorney's license has been suspended.

Article 45. Revocation or Termination of a License to Practice Law

1. Revocation of a license to practice law shall be in line with the Code of the Republic of Kazakhstan on Administrative Offences.
2. Termination of the license to practice law shall be in line with the procedures and grounds, set forth in the Law of the Republic of Kazakhstan "On Permits and Notifications".
3. Apart from the grounds set forth in paragraph 2 of this article, a license to practice law may be terminated through legal action brought by the licensing authority in the following cases:

- 1) gross or repeated violation of the legislation of the Republic of Kazakhstan, principles of legal assistance provision and the Code of Professional Ethics of Attorneys by an attorney in the line of duty;
- 2) attorney's failure to exercise professional duties in view of insufficient skills;
- 3) persistence of the grounds, set forth in subparagraphs 4) and 8), paragraph 2, Article 44 of this Law, which entailed suspension of the license;
- 4) when it has been established that an attorney has put false or deliberately falsified information in the documents that constituted grounds for issuing the license;
- 5) triple suspension of the license on the grounds set forth in subparagraphs 8) and 9), paragraph 2, Article 44 of this Law.

4. An application of the council of a bar association shall constitute the grounds for preparing a statement of claim for terminating a license to practice law in the cases stipulated by paragraph 3 of this article.

A recommendation of a territorial justice agency shall constitute the grounds for preparing a statement of claim for terminating a license to practice law in the cases stipulated by subparagraphs 1), 3), 4) and 5), paragraph 3 of this article.

The licensing authority, based on court decision, shall issue an order on termination of a license to practice law and shall send a copy of the order to the third person, whose license has been terminated. Courts, law-enforcement agencies and a respective bar association shall be notified about termination of the license.

5. Apart from the grounds, set forth in paragraph 2 of this article, the licensing authority shall terminate the license to practice law if:

- 1) an attorney has been found legally incapable or insufficiently capable, deceased or missing by legally effective court decision;
- 2) an attorney has renounced citizenship of the Republic of Kazakhstan;
- 3) an attorney has been released from criminal responsibility for the commission of an intentional crime based on paragraphs 3), 4), 9), 10) and 12) of the first part of Articles 35 or 36 of the Criminal Procedures Code of the Republic of Kazakhstan;
- 4) an attorney has been found guilty of an intended crime and the verdict has entered into legal force;
- 5) court decision on application of compulsory medical measures to an attorney has entered into legal force.

6. A recommendation of a territorial justice agency shall constitute grounds for the decision on termination of the license to practice law in the cases listed in paragraph 5 of this article. The licensing authority shall issue an order on termination of a license to practice law and shall send a copy of the order to the third person, whose license has been terminated. The authorized body for organizational and logistical support of courts, the central offices of law-enforcement agencies and the bar association shall be notified about the license termination.

Article 46. Types of Legal assistance Rendered by Attorneys

1. Attorneys shall render legal assistance in the following manner:

- 1) provide verbal and written counselling and advice on legal issues;
- 2) draw up statements, complaints, applications and other legal documents;
- 3) participate in civil proceedings as representatives of their clients (proxy givers);
- 4) participate in criminal or administrative proceedings as defenders or representatives of their clients (proxy givers);
- 5) represent their clients (proxy givers) in mediation procedures, in hearing of cases in court of arbitration and other dispute resolution bodies;

- 6) represent interests of their clients (proxy givers) in government agencies, public associations and other organizations;
 - 7) represent interests of their clients (proxy givers) in government agencies, courts and law-enforcement agencies of foreign states, international judicial bodies, non-governmental organizations of foreign states, unless otherwise provided by laws of foreign states, constitutional documents of international judicial bodies and other international organizations or international treaties of the Republic of Kazakhstan;
 - 8) participate as representatives of their clients (proxy givers) in enforcement proceedings and during execution of punishment under criminal law;
 - 9) carry out conciliation procedures.
2. Attorneys shall render other kinds of legal assistance not prohibited by legislation of the Republic of Kazakhstan.
 3. A person seeking legal assistance shall be free to choose an attorney unless an attorney is appointed to him/her for provision of state-guaranteed legal assistance (Article 49 of this Law) and as a defender in criminal cases, in which attorney's participation is mandatory if a defendant has not chosen or has failed to choose an attorney.
 4. Criminal defence shall be rendered only by professional attorneys.

Article 47. Documents Certifying Powers of Attorney

1. Attorney's powers to conduct a particular case shall be certified by letter or warrant of attorney as prescribed by the procedural legislation.
Powers of a foreign attorney acting on the basis of a respective international agreement, ratified by the Republic of Kazakhstan, shall be supported by documents, certifying his/her identity, status and powers to render legal assistance.
2. An attorney shall be entitled to engage in legal practice within and outside the territory of the Republic of Kazakhstan in order to accomplish his/her assignment, if this is not at variance with laws of respective states and international treaties of the Republic of Kazakhstan.

Article 48. Remuneration for Legal assistance Rendered by Attorneys and Reimbursement of Expenses Related to Conciliation Procedures

1. The amount of remuneration for legal assistance rendered by attorneys and reimbursement of expenses related to conciliation procedures shall be determined by written agreement between the attorney and the person seeking legal assistance.
The agreement shall be signed in accordance with the procedure established by civil legislation of the Republic of Kazakhstan.
One copy of legal assistance agreement shall be handed to the person, who has signed it.
It is essential that the agreement shall specify:
 - 1) surname, name and patronymic (if any) of the attorney, who has assumed the assignment as a defender or a representative. Under the agreement between a law firm and a person, seeking legal assistance, the law firm shall appoint an attorney to accomplish the assignment of defence or representation;
 - 2) organizational form of activity of the appointed attorney and the bar association of which he/she is a member;
 - 3) the scope of the assignment;
 - 4) the amount and procedure of remuneration for provided legal assistance and reimbursement of expenses related to defence and representation, as well as conciliation procedures;
 - 5) the procedure and conditions for termination of the agreement.

Agreements that make the amount of attorney's fee conditional on the outcome of a case or success of legal practice, or agreements under which an attorney receives part of judgement amount shall not be admissible.

An attorney or a law firm may not receive cash remuneration for their services, including verbal consultation and expenses related to the accomplishment of an assignment.

2. In order to determine the amount of recommended remuneration for legal services rendered by attorneys to clients (proxy givers), the Republican Bar Association shall develop and approve a non-binding fee schedule of legal assistance services.

3. Where statutorily provided, legal assistance rendered by an attorney, travel, transport and other expenses shall be remunerated from the budget according to decisions of bodies of inquiry and preliminary investigation and courts.

4. In the cases stipulated in paragraph 3 of this article, the amount of remuneration for legal assistance rendered by an attorney and reimbursement of expenses related to legal counselling, defence and representation, as well as conciliation procedures, shall be established by the Government of the Republic of Kazakhstan.

In the cases stipulated in paragraph 3 of this article, the arrangements for remunerating legal assistance rendered by an attorney and reimbursing expenses related to legal counselling, defence and representation, as well as conciliation procedures, shall comply with the rules of remuneration for legal assistance, established by the Ministry of Justice of the Republic of Kazakhstan.

Article 49. Provision of State-Guaranteed Legal assistance

1. Attorneys shall render state-guaranteed legal assistance to:

- 1) plaintiffs in cases related to redress of injury in connection with breadwinner's death, work-related bodily harm or health damage;
- 2) plaintiffs and defendants, who are participants of the Great Patriotic War and persons equated to them, army conscripts, disabled persons of groups I and II, and age pensioners, except when the dispute under consideration is related to entrepreneurial activity;
- 3) individuals seeking recovery of alimony, assignment of pensions and allowances, rehabilitation, refugee or repatriate status, minors without parental support; when necessary, attorneys shall draw up legal documents.

2. In the cases stipulated in paragraph 1 of this article and other cases provided for by the legislation of the Republic of Kazakhstan, state-guaranteed legal assistance rendered by an attorney shall be remunerated from the state budget.

3. Grounds for the provision of legal assistance funded from the state budget shall be determined by this Law, laws of the Republic of Kazakhstan on administrative offences, Criminal Procedures and Civil Procedures Codes of the Republic of Kazakhstan.

4. An attorney may be selected from the list of attorneys participating in provision of state-guaranteed legal assistance with the help of the Unified Information System of Attorneys.

5. If legal assistance in the form of legal counselling cannot be provided immediately after the application, the applicant shall be notified in an appropriate form about the time of meeting within three working days from the moment of application.

If an applicant cannot appear in the venue appointed by an attorney because of a serious illness or disability, causing mobility impairments, legal counselling shall be provided to the applicant at the place of stay. In such cases, duration of legal counselling shall not exceed one hour. If necessary, the duration may be extended by the chairman of the council of a bar association of a region, a city of national importance, and the capital city.

An individual may receive legal assistance on one and the same issue only once.

6. An attorney rendering state-guaranteed legal assistance in the form of legal counselling remunerated from the budget shall maintain records of rendered aid as prescribed by the authorized body.

Legal assistance in the form of legal counselling, rendered by an attorney, shall be remunerated from the state budget based on a work completion report and a request of a respective bar association.

The amount of remuneration for legal assistance rendered by an attorney and reimbursement of expenses related to legal counselling, defence and representation, as well as conciliation procedures, shall be established by the Government of the Republic of Kazakhstan.

The arrangements for remunerating legal assistance rendered by an attorney and reimbursing expenses related to legal counselling, defence and representation, as well as conciliation procedures, shall comply with the rules of remuneration for legal assistance, established by the authorized body.

Chapter 4. Organization of Legal Practice

Article 50. Organizational Forms of Legal Practice

An attorney shall be entitled to carry out his/her activities as an employee of a legal advice office or individually without being registered as a legal entity, and to establish a law firm independently or together with other attorneys.

An attorney shall be a member of a bar association, established and operating in a respective administrative-territorial entity.

An attorney, who works individually without being registered as a legal entity, shall have an office in order to receive visitors, ensure privacy of attorney's proceedings and maintain attorney-client privilege.

Article 51. Bar Association

1. A bar association shall be founded by persons licensed to practice law.

2. A bar association shall be a non-profit, independent, professional, self-regulating and self-financing organization of lawyers, intended for rendering qualified legal assistance to individuals and legal entities, expression and protection of rights and legal interests of lawyers and fulfilment of other functions set forth in this Law.

3. There can be only one bar association operating in a region, a city of national importance and the capital city, which may not establish its structural units (branches and officers) in the territory of another region, city of national importance or the capital city.

If there is no bar association in a region, a city of national importance or the capital city, it may be formed on the initiative of at least ten founders meeting the requirements set forth in Article 33 of this Law.

No special permission of government agencies is required for setting up a bar association.

The name of a bar association shall involve the name of the administrative-territorial entity where it operates.

4. The overall objectives of a bar association shall include:

- 1) promotion, professional assistance and protection of members of the bar and their legal practices;
- 2) logistical, information and reference support of members of the bar;
- 3) organization of professional oversight of legal practice;
- 4) organization of provision of state-guaranteed legal assistance (Article 49 of this Law) and defence as assigned by pre-trial investigation bodies and the court.

5. A bar association shall publish on its internet site:

- 1) an up-to-date list of its members;

- 2) laws and regulations of the Republic of Kazakhstan pertaining to legal practice;
 - 3) the Code of Professional Ethics;
 - 4) standards of legal assistance provision;
 - 5) legal assistance quality criteria;
 - 6) skill improvement standards;
 - 7) information about the comprehensive social legal assistance;
 - 8) information about decisions passed by the General Meeting (Conference) of members of the bar and executive bodies of the bar association;
 - 9) results of work of the disciplinary board of the bar association;
 - 10) a report on results of financial and economic activities of the bar association, information about all incomes and expenditures by specific areas;
 - 11) other necessary information about activities of the bar association and its members.
- A bar association shall ensure access to information for its members.
6. Bar associations may establish legal advice offices.
 7. Bar associations shall unite in the Regional Bar Association.

Article 52. Property of the Bar Association

1. Property of a bar association shall be constituted by deductions of members of the bar, grants and charitable assistance (donations) made by individuals and legal entities as prescribed by laws of the Republic of Kazakhstan.
2. General expenses of a bar association shall include logistical costs, remuneration of attorneys and reimbursement of expenses related to their work in the bar, salary expenditures of the administrative staff of the bar association and other costs provided for by laws of the Republic of Kazakhstan and the bar association's budget.

Article 53. Charter of the Bar Association

1. A charter of a bar association shall include:
 - 1) name, purpose and objectives of the bar association;
 - 2) rights and responsibilities of members of the bar;
 - 3) arrangements for admission to the bar, suspension and termination of bar membership;
 - 4) structure of the bar, procedure for forming its bodies and their competencies;
 - 5) procedure for forming and activities of legal advice offices;
 - 6) sources of and procedure for administration of property;
 - 7) procedure for paying membership fees and target contributions;
 - 8) procedure for rendering state-guaranteed legal assistance by attorneys and distributing legal assistance between attorneys as assigned by court, inquiry and pre-trial investigation bodies;
 - 9) procedure for certification of attorneys based on the Certification Regulations for Attorneys;
 - 10) disciplinary responsibility of members of the bar and interns and procedures for bringing them to disciplinary responsibility;
 - 11) application procedure for preparing a statement of claim for terminating a license to practice law;
 - 12) procedures for reorganization and dissolution of the bar association;
 - 13) disposition of property during dissolution of the bar.
2. The charter of the bar association shall include provisions meeting the requirements set forth in Sections 1 and 3 of this Law, and also may include other provisions consistent with laws of the Republic of Kazakhstan.

Article 54. Bodies of the Bar Association

1. A bar association shall have the following bodies:

- 1) General Meeting (Conference) of members;
- 2) executive body – the Council;
- 3) controlling body– the Auditing Commission.

A bar association shall establish a disciplinary board.

2. In cases stipulated by the Charter, the bar association may set up an ethics commission and other bodies, operating through donations received by the General Meeting of the bar association.

Article 55. General Meeting (Conference) of Members of the Bar

1. The General Meeting (Conference) shall be entitled to decide any issues related to activities of the bar association.

2. Exclusive competences of the General Meeting (Conference) include:

- 1) adoption and amendment of the bar association's charter;
- 2) election of the Council of the bar association and Chair of the Council, the Auditing Commission and its Chair, and the Disciplinary Board of the bar association;
- 3) election of other bodies and heads of bodies as prescribed by the Charter, approval of regulations of these bodies;
- 4) consideration and approval of reports on activity of bar association bodies, executives and staff members;
- 5) early recall of bar association executives and staff members;
- 6) setting rates of membership fees and target contributions estimated in the monthly calculation index, established by legislation of the Republic of Kazakhstan; attorneys working in rural communities or having legal practice experience less than one year shall pay fifty percent of the established rate of the membership fees and target contributions;
- 7) approval of the report on financial and economic activities of the bar association.

3. The General Meeting (Conference) shall be entitled to pass decisions if attended by two thirds of the total number of members of the bar association or the total number of elected delegates of the Conference.

4. The General Meeting (Conference) shall be convened by the Council of the bar association at least once a year. By request of the Auditing Commission or at least a quarter of the total number of bar members, the Council Chair shall convene the General Meeting (Conference) within thirty days.

5. The Charter of the bar association may refer other issues to the exclusive competence of the General Meeting (Conference).

Article 56. Council of the Bar Association

1. The Council of the bar association shall be elected by secret ballot for a term of four years. A person may not be elected to the Council for more than one term.

2. The Council of the bar shall:

- 1) arrange activities of the bar association for provision of legal assistance to individuals and legal entities, including state-funded legal assistance rendered by attorneys as provided for by law of the Republic of Kazakhstan;
- 2) organize implementation of decisions of the General Meeting (Conference), convene the General Meeting (Conference);
- 3) defend professional and other rights of attorneys;
- 4) admit to the bar, exclude from the bar, arrange internship of attorneys;
- 5) submit quarterly summary reports of attorneys' activities to the Republican Bar Association;

- 6) release from membership fees and target contributions attorneys on maternity leave for the period of three years, as well as attorneys, not practicing law for more than two successive months due to temporary incapacity to work;
- 7) arrange investigation of complaints against actions of attorneys filed by individuals and legal entities;
- 8) organize certification and professional development of attorneys;
- 9) request the licensing authority to suspend an attorney's license or to prepare a statement of claim for terminating an attorney's license on grounds stipulated in this Law;
- 10) arrange measures to ensure attorneys' compliance with the Law of the Republic of Kazakhstan "On Combating Legalization (Laundering) of Illegally Gained Income and Financing of Terrorism";
- 11) arrange events for professional development of attorneys, analyse, summarize and replicate good professional practices;
- 12) arrange codification and reference work, develop and release guidelines and manuals on legal practice;
- 13) establish legal advice offices, appoint and dismiss heads of such offices;
- 14) issue attorney IDs, approved by the Republican Bar Associations upon consultation with the authorized body;
- 15) manage bar association's funds in the manner prescribed by the Charter and the General Meeting;
- 16) organize accounting and reporting, records management and forming of primary statistics;
- 17) establish procedures for administering bar association's property;
- 18) decide other issues related to bar association's activities with the exception of those under the exclusive competence of the General Meeting of the bar.

Article 57. Chair of the Council of the Bar Association

1. An attorney who has been a member of the bar at least for five years may be elected Chair of the Council.

The Chair of the Council shall be elected by secret ballot for a term of four years.

A person may not be elected the Chair of the Council for more than one term.

2. In accordance with the Charter, the Chair of the Council shall:

- 1) organize activities of the Council, preside at its sessions and monitor implementation of decisions of the Council and the General Meetings of the bar;
- 2) direct the work of the Council staff, hire and dismiss members of the staff;
- 3) represent the bar association in government agencies, public associations and other organizations and institutions;
- 4) ensure timely notification of the licensing authority and the Republican Bar Association about license holders admitted to the bar, specifying organizational form of legal practice chosen by a respective attorney and his/her legal address, as well as about persons excluded from the bar, specifying the reasons of exclusion;
- 5) ensure submission to the Republican Bar Association of a report on bar activities, including statistics of legal assistance rendered by attorneys;
- 6) ensure timely submission to the territorial justice agency of a summary report on state-guaranteed legal assistance provided by attorneys and reimbursement of expenses related to protection and representation from the budget funds;
- 7) ensure implementation of internship programs for interns;
- 8) ensure implementation of professional development programs for attorneys.

Other powers of the Chair of the Council shall be determined by the Charter of the bar association.

Article 58. The Auditing Commission of the Bar Association

1. The Auditing Commission is a supervisory body of a bar association, reviewing financial and economic activities of the bar and its bodies.
2. The Auditing Commission may be formed of members of the bar association. Commission members shall not be entitled to hold other elective posts in the bar association. The Auditing Commission may be comprised maximum of five members. Members of the Auditing Commission shall operate on a voluntary basis.
3. The Auditing Commission of the bar association shall be elected by the General Meeting (Conference) of members of the bar association for the period not exceeding two years. A person may not be elected a member of the Auditing Commission for more than one term.
4. The Auditing Commission shall be entitled to audit financial and economic activities of a bar association and its bodies at any time. For this purpose the Auditing Commission shall have the right of unconditional access to all documents of the bar association. Bar association bodies shall provide necessary explanations in verbal and written forms upon the Commission's request.
5. The Auditing Commission shall mandatorily review the annual report of financial and economic performance of a bar association and shall publish the audit results on internet sites of the respective bar association and the Republican Bar Association.
6. The Auditing Commission shall present its report to the regular General Meeting (Conference) of the bar association.
7. Rules of procedure and frequency or submission of reports by the Auditing Commission shall be defined by the Charter and by-laws of the bar association.

Article 59. Bar Membership

1. Bar membership shall be mandatory for attorneys. Admission fees shall be prohibited. Discovery of a circumstance set forth in paragraph 2, Article 33 of this Law shall give ground for denying admission to the bar. Denial of admission to the bar may be appealed in the Republican Bar Association and (or) in court. The decision of the Council of the bar association to deny admission to the bar may be appealed in the Republican Bar Association. In case of a failure to settle the dispute, the decision of the Republican Bar Association may be appealed in court.
2. If an attorney has been excluded from a bar association, but retained the license to practice law, he/she may be readmitted to the bar not earlier than in six months after the exclusion. The attorney shall abstain from practicing law during this period.

Article 60. Oath of an Attorney

1. According to the procedure established by the Republican Bar Association, a license holder admitted to a bar association, shall take the following oath:
“I, (name and surname), do solemnly swear that I will observe the principles of provision of legal assistance and the Code of Professional Ethics, will protect human rights, freedoms and interests in good faith, will uphold the right to access to qualified legal assistance and will fulfil the assigned duties in line with the Constitution of the Republic of Kazakhstan and legislation of the Republic of Kazakhstan”.
2. The license holder shall sign the text of the oath (declaration) to be stored in his/her personal file.
A form of an attorney ID and a procedure for filling out the ID shall be developed and approved by the Republican Bar Association upon consultation with the authorized body.

A person, who has been disbarred or suspended from practice, shall hand his/her attorney ID to the respective bar association.

3. A bar association shall maintain a register of attorneys and publish its up-to-date version on its website.

A bar association shall notify the Republican Bar Association about attorney's admission to the bar, suspension from practice or disbarment.

Article 61. Suspension of Bar Membership

1. Suspension of the license to practice law on grounds set forth in subparagraphs 1), 2), 3), 4), 5), 6) and 7), paragraph 2, and paragraph 4, Article 44 of this Law shall give grounds for suspending bar membership.

2. Suspension of bar membership shall be applied as a disciplinary measure if:

- 1) the Disciplinary Board of the bar association has established the presence of grounds set forth in subparagraphs 8) and 9), paragraph 2, Article 44 of this law with further submission of a respective recommendation to the authorized body;
- 2) in other cases stipulated in the Charter of the bar association.

The bar association shall readmit an attorney after renewal of his/her license to practice law and also according to the procedures and in cases set forth in the Charter of the bar association.

Article 62. Termination of Membership and Exclusion from the Bar

1. Termination of a license to practice law shall be the ground for termination of bar membership.

2. Bar membership shall be terminated:

- 1) on attorney's own will;
- 2) based on attorney's notification about his/her transfer to another bar association;
- 3) in case of attorney's death;
- 4) in other cases stipulated in the Charter of the bar association.

3. Exclusion from the bar shall be applied as a disciplinary measure if:

- 1) a license to practice law has been revoked in accordance with the procedure and on grounds set forth in Article 45 of this Law;
- 2) the Disciplinary Board of the bar association has established that the attorney has committed an action giving grounds for license revocation with further submission of a respective recommendation to the authorized body;
- 3) in other cases prescribed by the Charter of the bar association.

4. Exclusion from the bar may be appealed in the authorized body within one month from the day of receipt by the attorney of a copy of the Council's decision to exclude him/her from the bar association.

In case of a failure to settle the dispute, the decision of the authorized body may be appealed in court.

Article 63. Rights and Responsibilities of a Member of the Bar

1. A member of the bar shall be entitled to:

- 1) enjoy support, professional assistance and protection from the bar, its bodies and officials;
- 2) elect and be elected in the bodies of the bar;
- 3) raise with the bodies of the bar issues related to its activities, offer proposals on improving performance of the bar and its bodies, participate in discussion and decision-making, request documents and activity records from the bodies of the bar;
- 4) participate personally in all audits and discussions of his/her activity or behaviour by the bodies of the bar;

- 5) use property of the bar according to the procedure and under the terms prescribed by its Charter;
- 6) withdraw from the bar on his/her own initiative.
2. Apart from common responsibilities of an attorney, set forth in Article 34 of this Law, a member of the bar shall:
 - 1) comply with requirements of the Character of the bar;
 - 2) abide by decisions of the General Meeting and bodies of the bar;
 - 3) pay membership fees and target contributions;
 - 4) submit statistical report of his/her activity to the Council of the bar;
 - 5) appeal to the licensing authority for updating his/her license if he/she has changed his/her surname, first name and patronymic (if any) according to the procedure and under the terms established by Law of the Republic of Kazakhstan “On Permissions and Notifications”;
 - 6) notify the Council of the bar about change of his/her legal address;
 - 7) submit to the Council of the bar materials necessary for examining complaints by individuals and legal entities about quality of legal assistance rendered by him/her.
3. A member of the bar may not have any unilateral estate liability to the bar except for payment of the membership fee and the target contributions.
4. Members of the bar shall have equal rights and responsibilities.

Article 64. Legal Advice Office

1. In order to ensure citizens’ access to qualified legal assistance, the Council of the bar shall establish legal advice offices, including specialized ones.
2. Location of a legal advice office shall be defined by the Council.
3. A legal advice office shall be a structural unit (branch) of the bar association. It shall have a seal with indication of its name, affiliation with a respective bar association and other attributes necessary for providing legal assistance. A legal advice office shall act on grounds of Regulations adopted by the General Meeting (Conference) of the bar.
4. Head of a legal advice office shall be appointed by the Council of the bar.

Article 65. Law Firm

1. A law firm shall be a non-profit organization.
2. A law firm shall be established (founded) for creating material, organizational, legal and other conditions for provision of legal assistance by attorneys.
3. A law firm shall be founded by a member (members) of the bar. An attorney may be a partner in one law firm only.
4. Partners in a law firm shall not be liable for obligations of the law firm, and the law firm shall not be liable for obligations of its partners.
5. In accordance with the tax legislation of the Republic of Kazakhstan, a law firm shall act as attorneys’ tax agent, dealing with their law practice incomes, as well as their representative for settlements with clients (proxy givers) and third parties and for other issues set forth in the constituent documents of the law firm.
6. Attorneys – founders of the law firm shall sign a partner agreement in simple written form. The agreement shall oblige the partners to join their efforts for providing legal assistance on behalf of all partners. The partnership agreement shall not be submitted for official registration of the law firm.
7. The managing partner shall be in charge of administration of common cases unless otherwise prescribed by the partner agreement. The law firm shall enter into a legal assistance agreement with a client (proxy giver) in the person of the executive partner on behalf of all partners of the law firm.
8. Activities of a law firm founded by one attorney shall be based on its Charter.

9. A partner (partners) of the law firm shall, within ten calendar days from the day of official registration of the law firm, notify a respective bar association about the registration and provide the firm's partnership documents to the bar association.

10. In-kind contribution of partners of law firms shall be in the ownership of the law firm.

11. Composition of law firm partners may change if:

- 1) a partner withdraws;
- 2) a new partner is admitted;
- 3) a partner ceases law practice on grounds stipulated by this law.

12. Law firm partners shall be entitled:

- 1) in case of withdrawal from the law firm or cessation of law practice, to obtain part of the firm's property or cost of property within the value of their in-kind contributions, unless otherwise stipulated by the charter of the law firm;
- 2) in case of dissolution of the law firm, to obtain part of its property left after settlements with creditors, within the value of their in-kind contributions.

13. Establishment of a law firm shall require no special permission from government agencies.

Article 66. Private Practice

1. An attorney who decides to engage in private practice shall bring this fact to notice of a respective bar association. The notice shall include surname, first name, patronymic (if any) and permanent address of the attorney.

2. An attorney in private practice forming no legal entity shall be entitled to have a bank settlement account and other bank accounts, personal seal, stamps and personal forms.

Article 67. Republican Bar Association

1. The Republican Bar Association shall be a non-profit, independent, professional, self-regulating and self-financing organization based on mandatory membership of bar associations.

2. The Republican Bar Association as a self-regulating body shall represent and protect interests of bar associations and attorneys in government agencies and other organizations in the Republic of Kazakhstan and abroad, coordinate activities of bar associations, ensure high quality of legal assistance provided by attorneys.

3. The Republican Bar Association shall be established by the Republican Conference of Delegates of Bar Associations.

4. The Charter of the Republican Bar Association shall be adopted by the Republican Conference of Delegates of Bar Associations.

5. The Republican Bar Association shall be officially registered according to the procedure established by law of the Republic of Kazakhstan.

6. Reorganization and dissolution of the Republican Bar Association shall be in line with the procedure established by law of the Republic of Kazakhstan.

7. Decisions of the Republican Bar Association and its bodies, passed within their competence, shall be binding for bar associations and attorneys.

8. The Republican Bar Association shall maintain an up-to-date register of practicing attorneys, as well as lists of attorneys-members of territorial bar associations.

9. The Republican Bar Association shall publish on its website:

- 1) an up-to-date list of practicing attorneys and lists of attorneys – members of territorial bar associations;
- 2) laws and regulations of the Republic of Kazakhstan pertaining to legal practice;
- 3) the Code of Professional Ethics;
- 4) standards of legal assistance provision;

- 5) criteria of legal assistance quality;
 - 6) professional development standards;
 - 7) a report on results of financial and economic activities of the Republican Bar Association, including information about all incomes and expenditures by specific areas;
 - 8) fee schedule of legal assistance;
 - 9) information about composition of Councils of bar associations and the Republican Bar Association;
 - 10) information about rendered comprehensive social legal assistance;
 - 11) a report on results of financial and economic activities of the bar;
 - 12) activities and events of the bar;
 - 13) other necessary information about activities of the Republican Bar Association.
- The Republican Bar Association shall ensure access to information for members of bar associations.

Article 68. Charter of the Republican Bar Association

1. The Charter of the Republican Bar Association shall include:
 - 1) name, purpose and objectives of the Republican Bar Association;
 - 2) rights and responsibilities of members of the Republican Bar Association;
 - 3) structure of the Republican Bar Association, procedure for forming and competences of its bodies;
 - 4) sources of and procedure for administration of property;
 - 5) amount and procedure for making contributions by bar associations;
 - 6) procedures for reorganization and dissolution of the Republican Bar Association.
2. The Charter of the Republican Bar Association shall include provisions meeting the requirements set forth in Section 1 of this Law and this section, and also may include other provisions consistent with laws of the Republic of Kazakhstan.
3. In the cases provided for by the Charter, ethics committee and other bodies, operating through regulations adopted by the Republican Conference of Delegates of Bar Associations, may be formed under the Republican Bar Association.

Article 69. Republican Conference of Delegates of Bar Associations

1. The Regional Conference of Delegates of Bar Associations shall be the supreme body of the Republican Bar Association. The Conference shall convene at least once in two years and shall be considered duly constituted if attended at least by two thirds of the elected delegates.
 2. The Conference shall be entitled to decide any issues pertaining to activities of the Republican Bar Association.
- The exclusive competences of the Conference shall be:
- 1) adoption and amendment of the Charter of the Regional Bar Association;
 - 2) determination of location of the Council of the Republican Bar Association;
 - 3) appointment of representational quota of bar associations at the Republican Conference;
 - 4) development, approval and amendment of the Code of Professional Ethics of Attorneys;
 - 5) development and approval of the Certification Regulations for Attorneys;
 - 6) development and approval of standards of legal assistance provision upon consultation with the authorized body;
 - 7) development and approval of quality criteria for legal assistance upon consultation with the authorized body;
 - 8) development and approval of a fee schedule of legal assistance;
 - 9) development and approval of the form and description of the robe upon consultation with the authorized body;

- 10) development and approval of the attorney ID form upon consultation with the authorized body;
- 11) development and approval of Internship Regulations for Attorneys' Interns upon consultation with the authorized body;
- 12) development and approval of professional development standards for attorneys upon consultation with the authorized body;
- 13) development and approval of procedures for professional development of attorneys upon consultation with the authorized body;
- 14) development and approval of the form, procedure for filling out and filing inquiry of attorney upon consultation with the authorized body;
- 15) determination and approval of the extent and procedure for provision of comprehensive social legal assistance;
- 16) development and approval of rules of conduct of attorneys in mass media;
- 17) development and approval of the Regulations on the Disciplinary Board of Attorneys;
- 18) development and approval of the Regulations on Disciplinary Board of the Bar;
- 19) election of the Auditing Commission of the Republican Bar Association;
- 20) election of the Auditing Commission of the Bar;
- 21) dismissal of members of the Council of the Republican Bar Association;
- 22) dismissal of the Chair of the Republican Bar Association;
- 23) determination of the amount and procedure of contributions of bar associations for general needs of the Republican Bar Association;
- 24) approval of the budget estimate of the Republican Bar Association;
- 25) approval of reports of the Council of the Republican Bar Association, including the report on implementation of the budget of the Republican Bar Association;
- 26) approval of the Auditing Commission's report on results of financial and economic activities of the Republican Bar Association;
- 27) approval of the regulations of the Conference;
- 28) development and approval of procedures for defining potential specialization of attorneys by categories of cases;
- 29) performance of other functions prescribed by the Charter of the Republican Bar Association and legislation of the Republic of Kazakhstan.

Article 70. The Council of the Republican Bar Association

1. The Council of the Republican Bar Association shall be a collective executive body of the Republican Bar Association.
2. The Council of the Republican Bar Association shall be elected by secret ballot for a term of four years and shall include an equal number of representatives of each bar association. Participation of other persons in the Council shall be prohibited. Chairs of councils of other bar associations may not be representatives of their bar associations.
A person may not be elected a member of the Council of the Republican Bar Association for more than one term.
3. The Council shall:
 - 1) arrange activities of the Republican Conference of Delegates of Bar Associations;
 - 2) organize implementation of decisions of the Republican Conference of Delegates of Bar Associations;
 - 3) in between conferences, make decisions on early termination of powers of members of the Council and the Auditing Commission, disbarred for reasons stipulated in this Law;
 - 4) represent the Republican Bar Association in government agencies and other organizations in the Republic of Kazakhstan and abroad;
 - 5) coordinate activities of bar associations;

- 6) submit to the Ministry of Justice of the Republic of Kazakhstan statistical data on legal assistance rendered by attorneys according to the form established by the authorized body;
 - 7) arrange activities for professional development of attorneys, develop unified professional training methodology for attorneys and their assistants;
 - 8) protect social and professional rights of attorneys;
 - 9) participate in expert review of drafts of laws and regulations pertaining to legal practice in the cases and manner prescribed by laws of the Republic of Kazakhstan;
 - 10) summarize reports of activities of bar associations on a quarterly basis;
 - 11) provide methodological support on legal practice issues;
 - 12) arrange information support of bar associations;
 - 13) convene the Republican Conference of Delegates of Bar Associations at least biennially and draw its agenda;
 - 14) manage property of the Republican Bar Association in accordance with the estimate and purpose of the property;
 - 15) approve regulations of the Council of the Republican Bar Association;
 - 16) approve the emblem of the Republican Bar Association;
 - 17) perform other functions prescribed by the Charter of the Republican Bar Association.
4. By request of the auditing commission or at least one third of the total number of bar associations, the Council of the Republican Bar Association shall convene a special session of the Republican Conference within two months.
5. The Council shall pass decisions by a simple majority of votes of members present at the meeting.

Article 71. Chair of the Republican Bar Association

1. An attorney who has at least five-year experience in legal practice may be elected the Chair of the Republican Bar Association. Chairs of councils of bar associations shall elect the Chair of the Republican Bar Association among them by secret ballot for a term of four years. The elected Chair's chairmanship in a respective bar association shall be then terminated.

A person may not fill the office of the Chair of the Republican Bar Association for more than one term.

A chair of a bar association, whose representative has not been elected the Chair of the Republican Bar Association for two successive terms, may be elected as the Chair of the Republican Bar Association.

2. The Chair of the Republican Bar Association shall:

- 1) represent the Republican Bar Association in government agencies and other organizations, as well as in relationships with individuals;
- 2) act on behalf of the Republican Bar Association with full authority;
- 3) give power of attorney;
- 4) effect deals on behalf of the Republican Bar Association and manage property of the Republican Bar Association by decision of its Council in accordance with the estimate and purpose of property;
- 5) convene sessions of the Council of the Republican Bar Association;
- 6) ensure implementation of decisions of the Council of the Republican Bar Association and decisions of the Republican Conference of Delegates of Bar Associations.

Article 72. Auditing Commission of the Republican Bar Association

1. The Auditing Commission is a body of the Republican Bar Association, controlling its financial and economic activities.

2. The Auditing Commission may be comprised of members of bar associations. Members of the Auditing Commission may not hold any other elective offices in the Republican Bar Association.

The Auditing Commission may be comprised maximum of five members.

Members of the Auditing Commission shall operate on a voluntary basis.

3. The Auditing Commission of the Republican Bar Association shall be elected by the Republican Conference of Delegates of Bar Association for a term of up to two years.

A person may not be a member of the Auditing Commission of the Republican Bar Association for more than one term.

4. The Auditing Commission shall be entitled to audit financial and economic activities of a bar association and its bodies at any time. For this purpose, the Auditing Commission shall have the right of unconditional access to all documents of the Republican Bar Association. Members of bodies of the Republican Bar Association shall provide necessary explanations in verbal and written forms upon the Commission's request.

5. The Auditing Commission shall mandatorily review the annual the annual report of financial and economic performance of the Republican Bar Association and shall publish the audit report on the internet site of the Republican Bar Association.

6. The Auditing Commission shall present the audit report at a regular meeting of the Republican Conference of Delegates of Bar Associations.

7. Rules of procedure and frequency of submission of reports by the Auditing Commission shall be defined by the Charter and by-laws of the Republican Bar Association.

Article 73. Property of the Republican Bar Association

1. Property of the Republican Bar Association shall be constituted by deductions of members of the bar, grants and chartable assistance (donations) made by individuals and legal entities as prescribed by laws of the Republic of Kazakhstan.

2. General expenses of the Republican Bar Association shall include logistical costs, remuneration of attorneys and reimbursement of expenses related to their work in the bar, salary expenditures of the administrative staff of the Republican Bar Association and other costs provided for by laws of the Republic of Kazakhstan and the estimate of the Republican Bar Association.

Article 74. Disciplinary Liability of Attorneys

1. The Disciplinary Board of Attorneys shall consider issues related to disciplinary liability of members of bar associations.

The Disciplinary Board of Attorneys shall be an independent body of the bar association and shall be accountable only to the General Meeting (Conference) of members of the bar.

Decisions of the Disciplinary Board shall be binding for the bar.

The Disciplinary Board of Attorneys shall be comprised of 6 attorneys with minimum five-year experience of legal practice, 3 representatives of the authorized body and 2 retired judges.

The Disciplinary Board of Attorneys shall be chaired by an attorney.

A person may not elected a member of the Disciplinary Board of Attorneys for more than one term.

The Republican Bar Association shall establish regulations of the Disciplinary Board of Attorneys and the procedure for disciplinary liability.

The members of the Disciplinary Board of Attorneys shall be elected for a term of two years.

2. A disciplinary case shall be heard within one month from the date of detection of a disciplinary violation.

3. The Disciplinary Board shall invite complainants and complainees to hearing of their disciplinary case.

If a justice agency files a motion for institution of disciplinary proceedings, it shall be compulsorily heard with participation of a representative of the respective justice agency.

If representatives of the above entities, being duly informed about time and venue of hearing, fail to appear at the hearing, this shall not prevent the disciplinary hearing.

4. A sufficient evidence that an attorney has violated provisions of this Law, legislation of the Republic of Kazakhstan, the Code of Professional Ethics of Attorneys, the Charter of the Bar, decisions of bodies of the Republican Bar Association and bar associations shall constitute grounds for initiating disciplinary proceedings.

5. The Disciplinary Board of Attorneys shall be entitled to apply the following disciplinary measures:

1) issue a notice obliging the bar member to correct the detected violations within the set terms;

2) issue a warning to the bar member;

3) suspend bar membership;

4) exclude from the bar with or without recommending that the licensing authority should prepare a statement of claim for terminating the attorney's license to practice law.

6. Only one disciplinary measure may be applied for the commission of a disciplinary violation.

7. Decisions listed in paragraph 5 of this article shall be approved by majority of members of the Disciplinary Board and shall become effective on the moment of approval.

A meeting of the Disciplinary Board of Attorneys shall be considered duly constituted if attended by more than a half of its members.

8. A bar association shall, within two days from the date of Disciplinary Board's decision on application of a disciplinary measure against a member of the bar, send a copy of the decision to the member of the bar and the complainant using means of communication ensuring confirmation of its receipt.

9. Decisions of the Disciplinary Board of Attorneys may be appealed in the Republican Bar Association and (or) court.

10. Results of work of the Disciplinary Board of Attorneys shall be published on the internet site of the bar association with distributing information by years and persons, as prescribed by the Regulations on the Disciplinary Board of Attorneys.

Article 75. Disciplinary Liability of the Bar

1. The Disciplinary Board of the Bar shall consider complaints related to actions (omissions) of the Disciplinary Board of Attorneys, disciplinary liability of administrative bodies of bar associations, the Republican Bar Association, and shall analyse disciplinary practice.

The Disciplinary Board of the Bar shall be an independent body of the Republican Bar Association and shall be accountable only to the Republican Conference of Delegates of Bar Associations. Decisions of the Disciplinary Board of the Bar shall be binding for the Republican Bar Association.

The Disciplinary Board of the Bar shall be comprised of 6 attorneys with minimum five-year experience of legal practice, 3 representatives of the authorized body and 2 retired judges.

The Disciplinary Board of the Bar shall be chaired by an attorney.

A person may not be elected a member of the Disciplinary Board of the Bar for more than one term.

The Republican Bar Association shall establish regulations of the Disciplinary Board of the Bar.

2. Following the examination of a complaint against a decision, actions (omissions) of the Disciplinary Board of Attorneys, the Disciplinary Board of the Bar shall be entitled to:

- 1) dismiss the complaint and uphold the decision of the Disciplinary Board of Attorneys;
- 2) change the decisions of the Disciplinary Board of Attorneys;
- 3) revoke the decision of the Disciplinary Board of Attorneys and pass a new decision;
- 4) remit the case for a new examination by a respective Disciplinary Board of Attorneys and oblige the Disciplinary Board of Attorneys to take respective measures.

A meeting of the Disciplinary Board of the Bar shall be considered duly constituted if attended by more than a half of its members.

The Disciplinary Board of the Bar shall pass decisions by open vote by majority of members present at the meeting.

A decision of the Disciplinary Board of the Bar may be appealed in court.

3. Results of work of the Disciplinary Board of the Bar shall be published on the internet site of the Republican Bar Association with distributing information by years and persons, as prescribed by the Regulations on the Disciplinary Board of the Bar.

Article 76. Appeal against Actions (Omissions) of a Bar Association, Decisions of its Administrative Bodies

In case of violation of rights and legal interests of a person by actions (omissions) of the Bar Association and (or) decisions of its administrative bodies, the person shall be entitled to appeal against such actions (omissions) and (or) decisions in the Republican Bar Association and (or) court.

Where provided for by this Law, actions (omissions) of the Bar Association and (or) its administrative bodies may be appealed in court with obligatory observance of pre-trial dispute regulation procedure.

SECTION 4. PROVISION OF LEGAL ASSISTANCE BY LEGAL ADVISERS

Chapter 5. Status of a Legal Adviser

Article 77. Legal Adviser

1. A legal adviser shall be an individual with higher legal education and at least two-year experience in legal practice, who has passed certification, is a member of the Bar and renders qualified legal assistance.

Legal advisers shall be:

individuals, rendering legal assistance as employees of an organization;
individuals, rendering legal assistance and conducting their activities as private entrepreneurs;
individuals, rendering legal assistance without being officially registered as private entrepreneurs.

2. The following persons shall not be referred to legal advisers:

employees of legal entities – on affairs of these entities, employees of government bodies – on affairs of these bodies and their territorial units;

authorized representatives of trade unions – on affairs of workers, employees and other persons, whose rights and interests shall be protected by the respective trade union;

authorized representatives of organizations, entitled by laws, charters or regulations to protect rights and interests of members of these organizations, as well as rights and interests of other persons;

joint parties acting on behalf of other joint parties.

3. A legal adviser may engage in private practice in the form of private enterprise or without being officially registered as a private entrepreneur, and may provide legal assistance pursuant to a labour contract with a legal entity.

Article 78. Rights and Responsibilities of a Legal Adviser

1. A legal adviser shall be entitled to render any kind of legal assistance to a person seeking such aid according to the procedure and under the terms prescribed by laws of the Republic of Kazakhstan.

2. A legal adviser shall, on his/her own behalf, sign a written agreement on legal assistance provision with a person seeking such aid.

While rendering legal assistance on grounds of a labour contract with a legal entity, a written legal assistance agreement shall be signed by a legal entity accredited with the chamber of legal advisers.

3. In accordance with the procedural law, a legal adviser acting as a representative shall be entitled to:

- 1) represent rights and interests of persons seeking legal assistance in all courts, government agencies and other agencies and organizations authorized to resolve corresponding issues;
- 2) request and receive from all government agencies and non-governmental organizations information necessary for carrying out his/her professional duties;
- 3) collect independently factual data necessary for rendering legal assistance and present such data to government agencies and officials;
- 4) gave access to materials related to the person seeking legal assistance, including service documents, investigation and court files, and to record information contained in those documents in any manner not prohibited by law;
- 5) request on a contractual basis expert opinion for clarifying issues that arise in connection with legal assistance provision and require expertise in science, technology, art and other spheres;
- 6) file motions, submit in the prescribed manner complaints against actions of officials of justice and prosecution agencies and courts, as well as other officials prejudicing rights and legal interests of persons seeking legal assistance;
- 7) use all legal means and forms of protecting rights and legal interests of persons seeking legal assistance;
- 8) carry out conciliation procedures;
- 9) suspend his/her practice on his/her own will by submitting a statement to the respective chamber of legal advisers according to the procedure established by bylaws of the chamber of legal advisers;
- 10) render comprehensive social legal assistance;
- 11) perform other actions not inconsistent with law.

4. An attorney shall be obliged to:

- 1) comply with provisions of the legislation of the Republic of Kazakhstan on legal assistance, as well as rules and standards of the chamber of legal advisers;
- 2) abide by rules of the Code of Professional Ethics established by the chamber of legal advisers of which he/she is a member, also pay fees established by this Law;
- 3) be guided by legal assistance principles in his/her professional activity;
- 4) be a member of a chamber of legal advisers in order to render legal assistance in the form of representation of interests in courts;
- 5) notify the client about inability to render legal assistance in view of impeding circumstances;
- 6) ensure integrity of documents received from the client and third persons in the course of legal assistance provision;

- 7) provide the client with information on his/her membership in a chamber of legal advisers;
 - 8) present a certificate of insurance upon client's request;
 - 9) upon client's request, present an extract from the register of members of the chamber of legal advisers of which he/she is a member;
 - 10) sign a non-disclosure agreement with the client if the latter does not object to it;
 - 11) engage in any legal activities necessary for establishing factual circumstances and protecting rights, freedoms and legal interests of the client;
 - 12) store documents used for legal assistance provision in hard or soft copy or as electronic documents during three years from completion of legal assistance provision;
 - 13) continuously improve his/her professional skills;
 - 14) submit to the chamber of legal advisers data about the legal entity with which he/she has concluded the labour contract, including information about the legal entity's compliance with requirements established by Article 87 of this Law, as well as information about any change of the data, within five working days from the contract conclusion and (or) the onset of the changes.
5. A legal adviser shall be prohibited from taking up a legal position worsening the situation of the person seeking legal assistance, using his/her authorities in the prejudice of the person, whose interests he/she represents.
6. A legal adviser shall be prohibited from rendering legal assistance in case of a conflict of interests.

A legal adviser shall be obliged to abstain from rendering legal assistance in the presence of: a conflict of interests of the client and the legal adviser, his/her near of kin, and also under other circumstances representing a conflict of interests; reasons stipulated by the procedural legislation of the Republic of Kazakhstan.

Article 79. Professional Indemnity Insurance of Legal Advisers

1. A legal adviser shall effect professional indemnity insurance in respect of claims arising from provision of legal assistance in a manner prejudicial to client's interests.
A legal adviser may not render legal assistance in the absence of a professional indemnity insurance agreement.
2. Subject matter of professional indemnity insurance shall be property interests of the insured person (policyholder) related to his/her obligation to compensate harm done to third persons by his/her activity as prescribed by law.
3. Insured event in professional indemnity insurance of legal advisers shall be the onset of civil liability of the policyholder for harm done to third persons by professional errors he/she has made while rendering legal assistance to such persons.
For the purposes of this article, professional errors shall be:
 - 1) breaches of procedural deadlines;
 - 2) improper completion of documents;
 - 3) failure to notify the third persons about consequences of performed legal actions, causing harm to such persons;
 - 4) loss or damage of documents received by the insured person (policy holder) from the client (proxy giver) for legal assistance provision;
 - 5) illegal disclosure of information covered by attorney-client privilege.Professional indemnity insurance agreement may set forth other actions (omissions) causing harm to property interests of third persons as a result of legal assistance rendered by the insured person.
4. An insured event shall be considered to have occurred if harm done to the third person is a result of unintended breach of professional duties by the insured person (policyholder).

5. For legal advisers operating in cities of national importance and the capital city the sum shall amount at least to 1000 monthly calculation indices, while for other legal advisers - at least to 500 monthly calculation indices, established by the law on the republican budget for the respective fiscal year as per the date of effectuation of professional indemnity insurance of legal advisers.

The procedure and other conditions of professional indemnity insurance of legal advisers shall be determined by agreement of the parties based on a standard form professional indemnity insurance of legal advisers.

Chapter 6. Organization of Activities of Legal Advisers

Article 80. Chamber of Legal Advisers

1. The Chamber of Legal Advisers shall be a self-regulating organization, regulating legal assistance provision and monitoring compliance of its members' activities with requirements of the legislation of the Republic of Kazakhstan on legal assistance, rules and standards of the Chamber of Legal Advisers, and the Code of Professional Ethics, included in the Unified Registry of Chambers of Legal Advisers and uniting at least 500 members - legal advisers.

2. Activities of the Chamber of Legal Advisers shall be regulated by Law of the Republic of Kazakhstan "On Self-Regulation", this Law, other laws of the Republic of Kazakhstan, as well as the Charter, rules and standards of the Chamber of Legal Advisers.

Article 81. The Charter of the Chamber of Legal Advisers

The charter of a chamber of legal advisers shall be based on the Standard Charter of the Chamber of Legal Advisers, developed and approved by the authorized body.

Article 82. Functions of the Chamber of Legal Advisers

The Chamber of Legal Advisers shall perform the following functions:

- 1) develop and approve the Code of Professional Ethics;
- 2) develop and approve terms and conditions for admission to the Chamber of Legal Advisers, additional requirements to the procedure for insuring property liability of its members while rendering legal assistance;
- 3) establish rates and procedure for payment of the membership fees and target contributions;
- 4) develop and approve standards of legal assistance provision upon consultation with the authorized body;
- 5) develop and approve quality criteria for legal assistance provision upon consultation with the authorized body;
- 6) develop and approve a non-binding fee schedule of legal assistance services;
- 7) develop and approve extent and procedure for provision of comprehensive legal assistance;
- 8) develop and approve professional development standards;
- 9) ensure professional development of legal advisers;
- 10) provide information and methodological support to its members;
- 11) promote organization of professional internship of graduates of post-secondary, higher legal education;
- 12) maintain a register of members of the Chamber of Legal Advisers;
- 13) represent interests of its members in government agencies, non-governmental organizations, including foreign and international ones;
- 14) offer proposals on further development of legal assistance services;
- 15) monitor compliance of activities of its members with requirements of the legislation of the Republic of Kazakhstan on legal assistance, rules and standards of legal assistance provision, and the Code of Professional Ethics;

16) hold its members liable for violation of this Law, legislation of the Republic of Kazakhstan on legal assistance, rules and standards of legal assistance provision, and the Code of Professional Ethics;

17) perform other functions prescribed by the this Law, legislation of the Republic of Kazakhstan, and the Charter of the Chamber of Legal Advisers.

Article 83. Rights and Responsibilities of the Chamber of Legal Advisers

Rights and responsibilities of the Chamber of Legal Advisers shall be defined by Law of the Republic of Kazakhstan “On Self-Regulation”.

The Chamber of Legal Advisers shall, on a monthly basis, submit to the authorized body information on admission of members to the Chamber of Legal Advisers, suspension and termination of membership.

Article 84. Membership in the Chamber of Legal Advisers

Membership in the Chamber of Legal Advisers shall be mandatory for individuals, rendering legal assistance in the form of representation of interests in civil proceedings.

Individuals, rendering other kinds of legal assistance, shall be entitled to join the Chamber of Legal Advisers.

Article 85. Requirements for Membership in the Chamber of Legal Advisers

1. An individual who has a higher legal education, at least two-year experience in the legal sector and has passed certification, shall be entitled to join the Chamber of Legal Advisers.

The certification shall be held in the form of a comprehensive testing of knowledge of the legislation of the Republic of Kazakhstan;

An applicant who receives a passing grade in the comprehensive testing, set by the Chamber of Legal Advisers, shall be considered to have passed the certification.

Terms and conditions for certification for the admission to the Chamber of Legal Advisers shall be defined by the Chamber upon consultation with the authorized body.

The Chamber of Legal Advisers may set additional requirements to its members.

A person may not be a legal adviser if he/she has proved to be, according to the established procedure, legally incapable or has unexpunged or unspent conviction.

2. In order to be admitted to the Chamber of Legal Advisers an individual shall present:

- 1) a certificate of higher legal education;
- 2) a certificate of no unexpunged or unspent conviction;
- 3) proof of at least two-year work experience in the legal sector.

A legal adviser shall be a member only of one Chamber of Legal Advisers meeting requirements of this Law.

3. A collective executive body of the Chamber of Legal Advisers shall make a decision on applicant's compliance with the requirements set forth in this article within five days from submission of the application and necessary documents by the applicant.

An applicant meeting the requirements of this article shall be considered admitted to the Chamber and information about such person shall be entered in the register of members of the Chamber of Legal Advisers within three days from the date of submission of the professional liability insurance contract by the applicant. Such an applicant shall be provided with a document proving his/her full membership in the Chamber of Legal Advisers within five working days from the date of entry of his/her data in the Register of Members of Chamber of Legal Advisers.

4. Grounds for denying admission to the Chamber of Legal Advisers shall be:

- 1) applicant's noncompliance with the requirements of this article;

2) applicant's exclusion from the Register of Members of the Chamber of Legal Advisers for violating requirements of the legislation of the Republic of Kazakhstan on legal assistance and the Code of Professional Ethics, if less than three years have passed from the date of exclusion.

A denial of admission to the Chamber of Legal Advisers may be appealed against in the authorized body.

In case of a failure to settle the dispute, the decision of the authorized body may be appealed in court.

5. The collective executive body of the Chamber of Legal Advisers shall terminate membership in the Chamber of Legal Advisers on grounds of:

- 1) legal adviser's statement of withdrawal from the Chamber of Legal Advisers;
- 2) decision on excluding a legal adviser from the Chamber of Legal Advisers, approved by the collective executive body of the Chamber.

6. A legal adviser may not be excluded from the Chamber until after completion of examination of a complaint against him/her, if the Chamber is examining such a complaint or considering application of disciplinary measures, and in the case of detection of violations – until after completion of examination of the case and application of a disciplinary measure by the Disciplinary Board.

7. Upon the receipt of information about death of a member of the Chamber of Legal Advisers, a record of termination of membership shall be put on the Register of Members of the Chamber of Legal Advisers.

8. A legal adviser, whose membership in the Chamber has been terminated, shall notify his/her clients about this fact.

9. The Chamber of Legal Advisers shall, within one day of the day when the collective executive body made the decision on excluding a legal adviser from the Chamber, publish this decision on the internet site of the Chamber of Legal Advisers and shall send copies of the decision to:

- 1) the person, who has been excluded from the Chamber;
- 2) all self-regulating organizations listed in the Register of Chambers of Legal Advisers, as well as to the Association of Chambers of Legal Advisers if the collective executive body approves the decision on excluding the person from the Chamber for violating requirements of the legislation of the Republic of Kazakhstan on legal assistance, rules and standards of legal assistance provision and the Code of Professional Ethics;
- 3) the authorized body.

Article 86. Membership Fees in the Chamber of Legal Advisers

The Chamber of Legal Advisers shall establish annual membership fees.

Admission fees shall be prohibited.

Article 87. Responsibilities of a Legal Entity Accredited in a Chamber of Legal Advisers

1. A legal entity rendering legal assistance shall be entitled to be accredited in a chamber of legal advisers.

2. A legal entity accredited in a chamber of legal advisers shall:

- 1) have legal advisers on the staff;
- 2) comply with requirements of the legislation of the Republic of Kazakhstan on legal assistance, rules and standards of legal assistance provision, and ensure compliance of its employees with the mentioned requirements;
- 3) ensure integrity of documents received from the client and third persons while rendering legal assistance;
- 4) notify the client about inability to render legal assistance in view of impeding

circumstances;

5) keep confidential information secret unless otherwise provided for by legal acts of the Republic of Kazakhstan;

6) give the respective Chamber of Legal Advisers access to documents and materials necessary for considering disciplinary liability of its member, except for confidential information;

7) submit to the Chamber of Legal Advisers information about compliance of its accredited legal entity with requirements of this article, as well as information about any changes in this information within five working days from the onset of changes;

8) store documents used for legal assistance provision in hard or soft copy or as electronic documents within three years from completion of legal assistance provision;

9) provide a legal adviser employed by the legal entity with information about the entity's incompliance with requirements of this article, as well as about any changes in this information within three working days from the onset of such incompliance and (or) changes.

Article 88. Access to Information and Its Protection from Unlawful Use

1. The Chamber of Legal Advisers shall, through publication on its internet site and (or) nationwide media outlets, ensure access to information about:

1) its composition;

2) terms, mechanisms and procedures ensuring accountability of its members;

3) members who have withdrawn from the Chamber and withdrawal reasons;

4) terms and conditions for membership in the Chamber;

5) rules and standards of the Chamber;

6) quality criteria for legal assistance services;

7) structure and competences of administrative and specialized bodies of the Chamber, numerical and personal composition of the collective administrative body and the executive body of the Chamber, as well as about the person exercising functions of the top executive of the Chamber;

8) decisions passed by the General Meeting of Members of the Chamber and the collective administrative body;

9) accountability of members of the Chamber for violating requirements of the legislation of the Republic of Kazakhstan, rules and standards of the Chamber (if such information is available);

10) any claims and statements filed with the court by the Chamber and against the Chamber;

11) the report of financial and economic activities, including information about all revenues and expenses by specific areas;

12) other information provided for by this Law, legal acts of the Republic of Kazakhstan and (or) bylaws of the Chamber.

2. The Chamber shall provide for tools and mechanisms for obtaining, using, processing, storing and protecting information that may cause moral and (or) property damage or create preconditions for such damage if unlawfully used by employees.

3. The Chamber shall be responsible to its members for actions of its employees related to unlawful use of information they obtained by virtue of their office.

4. The Chamber of Legal Advisers shall be responsible for a failure to execute and (or) for improper execution of its duty of disclosing information in accordance with legal acts of the Republic of Kazakhstan.

Article 89. Register of Chambers of Legal Advisers

1. The authorized body shall maintain the Register of Chambers of Legal Advisers in electronic format.

2. Information contained in the Register of Chambers of Legal Advisers shall be up-to-date and publicly available and shall be published on the internet site of the authorized body. Information about non-profit organizations meeting the requirements of Article 80 of this Law shall be entered in the Register of Chambers of Legal Advisers on the ground of notification in accordance with the Law of the Republic of Kazakhstan “On Permissions and Notifications”.

Upon the receipt of the notification, the authorized body shall check the compliance of the Chamber of Legal Advisers with the requirements of this Law, legal acts and legislation of the Republic of Kazakhstan.

3. Non-profit organizations, not listed on the Register of Chambers of Legal Advisers, may not use in their name and activity the terms “self-regulated”, “self-regulation” and their derivatives.

Article 90. Exclusion from the Register of Chambers of Legal Advisers

Grounds for exclusion from the Register of Chambers of Legal Advisers shall be as follows:

- 1) request of a Chamber of Legal Advisers about exclusion from the Register;
- 2) dissolution or reorganization of the non-profit organization;
- 3) legally effective court decision on exclusion from the Register of Chambers of Legal Advisers.

Article 91. Register of Members of the Chamber of Legal Advisers

1. The Chamber of Legal Advisers shall maintain up-to-date the Register of Members of the Chamber of Legal Advisers in electronic form and shall publish it on its internet site.

2. The Register of Members of the Chamber of Legal Advisers shall be part of the Register of Chambers of Legal Advisers, shall comply with requirements of this Law and contain information about membership in the Chamber of Legal Advisers, suspension of membership and exclusion from the Chamber.

3. A person shall acquire all rights of a member of the Register of Legal Advisers from the date of entry of his/her personal information prescribed by this article in the Register of Legal Advisers.

4. The Register of Members of the Chamber of Legal Advisers shall contain the following information about the members:

- 1) registration number and registration date;
- 2) surname, first name and patronymic (if it is indicated in the identity document), date of birth, ID data, place of residence, individual identification number (for individuals), contact phone numbers;
- 3) information about property liability insurance;
- 4) information about results of audits of members of the Chamber and disciplinary and other sanctions applied;
- 5) other information provided for by the authorized body, the Chamber of Legal Advisers.

5. In relation to those who have withdrawn from the Chamber of Legal Advisers, the Register shall, alongside with information listed in paragraph 4 of this article, contain information about date and reasons of withdrawal, which shall be published on the Chamber’s internet site.

6. Information listed in paragraph 4 of this article, except for information about place of residence, the ID data and other information, shall be published on the internet site unless access to such documents is restricted by legal acts of the Republic of Kazakhstan.

7. The Chamber of Legal Advisers shall maintain the Register of Members of the Chamber of Legal Advisers from the date of its registration with the Register of Chambers of Legal

Advisers as prescribed by this Law and Law of the Republic of Kazakhstan “On Self-Regulation”.

8. A member of the Chamber of Legal Advisers shall notify the Chamber in written or electronic form about the onset of any circumstances causing a change of information contained in the Register of Members of the Chamber of Legal Advisers within three working days from the onset of such events.

9. Information contained in the Register of Members of Legal Advisers shall be available upon request of individuals and legal entities in accordance with the procedure established by the Chamber of Legal Advisers within five working days from the date of request submission.

Article 92. Bodies of the Chamber of Legal Advisers

The Chamber of Legal Advisers shall have the following bodies:

- 1) General Meeting of Members;
- 2) collective administrative body;
- 3) executive administrative body;
- 4) controlling body (Auditing Commission).

Article 93. General Meeting of Members of the Chamber of Legal Advisers

1. The General Meeting of members of the Chamber of Legal Advisers shall be the supreme administrative body of the Chamber.

2. The competence of the General Meeting shall be defined by Law of the Republic of Kazakhstan “On Self-Regulation”, other legal acts of the Republic of Kazakhstan.

The exclusive competence of making other decisions by the General Meeting of Members of the Chamber shall be defined by this Law and the Charter of the Chamber of Legal Advisers.

3. The exclusive competence of the General Meeting shall include the following issues:

- 1) election of members of the Disciplinary Board of the Chamber;
- 2) election of members of the Auditing Commission.

Article 94. Collective Body of the Chamber of Legal Advisers

The competence of the collective body of the Chamber of Legal Advisers shall be defined by Law of the Republic of Kazakhstan “On Self-Regulation” and the Charter of the Chamber of Legal Advisers.

The competence of the collective body shall include:

- 1) approval of Regulations of the Disciplinary Board;
- 2) approval of Regulations of the Training Centre for Professional Development of Legal Advisers.

Article 95. Executive Body of the Chamber of Legal Advisers

The competence of the executive body of the Chamber of Legal Advisers shall be defined by Law of the Republic of Kazakhstan “On Self-Regulation” and the Charter of the Chamber of Legal Advisers.

Article 96. The Auditing Commission of the Chamber of Legal Advisers

1. The Auditing Commission shall be a supervisory body of the Chamber of Legal Advisers, monitoring financial and economic activities of its administrative bodies.

2. The Auditing Commission may be formed of members of the Chamber of Legal Advisers. Commission members shall not be entitled to hold posts in the executive body of the Chamber.

The Auditing Commission may be comprised maximum of five members.

Members of the Auditing Commission shall operate on a voluntary basis.

3. The Auditing Commission of the Chamber of Legal Advisers shall be elected by a general meeting for a term of up to two years.
4. The Auditing Commission shall be entitled to audit financial and economic activities of the Chamber of Legal Advisers and its bodies at any time. For this purpose, the Auditing Commission shall have unconditional access to all documents of the Chamber, whose bodies shall provide necessary verbal or written explanations upon the Commission's request.
5. The Auditing Commission shall mandatorily review the annual financial report of the Chamber of Legal Advisers before its approval by the General Meeting.
The General Meeting may not approve the annual financial report without the opinion of the Auditing Commission.
6. The Auditing Commission shall present its report to the General Meeting at least once in three months.
7. Rules of procedure and frequency or submission of reports by the Auditing Commission shall be defined by the Charter and by-laws of the Chamber of Legal Advisers.

Article 97. Specialized Bodies of the Chamber of Legal Advisers

1. The Chamber of Legal Advisers shall set up the Disciplinary Board to consider violation by its members of rules and standards and membership conditions of the Chamber, detected during audits, carried out by the body monitoring compliance of members of the Chamber with the rules and standards. The Disciplinary Board shall also consider complaints against actions of members of the Chamber and apply sanctions to them.
The Disciplinary Board shall have structural divisions, such as the legal ombudsman and the committee to summarize and analyse activities of the Disciplinary Board.
The legal ombudsman shall apply disciplinary sanctions in accordance with paragraph 3, Article 100 of this Law.
2. The Chamber of Legal Advisers shall have a training centre for professional development of legal advisers.

Article 98. Monitoring of Activities of Members of the Chamber of Legal Advisers

The procedure, under which the Chamber of Legal Advisers shall monitor compliance of activities of its members with the rules and standards of the Chamber and membership conditions shall be defined by Law of the Republic of Kazakhstan "On Self-Regulation".

Article 99. Liability of Members of the Chamber of Legal Advisers

Members of the Chamber of Legal Advisers, violating requirements of the legislation of the Republic of Kazakhstan on legal assistance, the Charter, rules and standards of the Chamber, shall be held liable in accordance with this Law, legal acts of the Republic of Kazakhstan, rules and standards of the Chamber of Legal Advisers.

Article 100. Disciplinary Responsibility of Members of the Chamber of Legal Advisers

1. The Disciplinary Board shall consider appeals, complains (hereinafter - complaints) about violation by members of the Chamber of Legal Advisers of requirements of legislation of the Republic of Kazakhstan on legal assistance, rules and standards of the Chamber of Legal Advisers, the Code of Professional Ethics, terms and conditions of membership in the Chamber of Legal Advisers.
The complaints procedure shall be established by the Chamber of Legal Advisers with due regard to requirements of this Law.
A complaint shall be considered within one month from the date of submission.
2. While considering a complaint, the Disciplinary Board shall invite to its meetings complainants and complainees. Absence of these persons from the meeting shall not impede

consideration of the complaint.

3. The Disciplinary Board of Attorneys shall be entitled to apply the following disciplinary measures:

- 1) issue an order obliging the member of the Chamber to correct the detected violations and setting terms for their correction;
- 2) issue a warning to the member of the Chamber;
- 3) recommend the standing collective administrative body of the Chamber to consider suspension of activities of the Member of the Chamber of Legal Advisers for up to three months;
- 4) recommend the standing collective administrative body of the Chamber to consider exclusion of the member from the Register of Members of Legal Advisers.

4. The decisions provided for by paragraphs 1) and 2), paragraph 3 of this article shall be approved by majority of members of the Disciplinary Board and shall become effective on the moment of approval. The decisions set forth in subparagraphs 3) and 4), paragraph 3 of this article shall be approved at least by two thirds of members of the Disciplinary Board.

5. The Chamber of Legal Advisers shall, within two days from the date of Disciplinary Board's decision on application of a disciplinary measure against its member, send a copy of the decision to the member of the Chamber and to the complainant using means of communication that ensure confirmation of its receipt.

6. Any decision of the Disciplinary Board, except for decisions stipulated in subparagraphs 3) and 4), paragraph 3 of this article, may be appealed by Members of the Chamber of Legal Advisers in the collective administrative body of the Chamber and (or) in court.

7. A decision of the collective administrative body to suspend activities of a member of the Chamber of Legal Advisers or exclude him/her from the Chamber may be appealed by the respective person in the authorized body and (or) in court.

Article 101. Appeal against Actions (Omissions) of the Chamber of Legal Advisers, Decisions of Its Administrative Bodies

Any member of the Chamber of Legal Advisers, in case of violation of his/her rights by actions (omissions) of the Chamber of Legal Advisers and (or) decisions of its administrative bodies, shall be entitled to appeal against such actions (omissions) and (or) decisions in the authorized body and (or) court, also claim compensation of damage from the Chamber of Legal Advisers in accordance with laws of the Republic of Kazakhstan.

Where provided for by law, actions (omissions) of the Chamber of Legal Advisers and (or) decisions of its administrative bodies may be appealed against in court with obligatory observance of pre-trial dispute regulation procedure.

Article 102. Liability of Chambers of Legal Advisers

1. The Chamber of Legal Advisers shall be liable for a violation of the legislation of the Republic of Kazakhstan on legal assistance, rules and standards of legal assistance provision, and the Code of Professional Ethics in accordance with this Law and other legal acts of the Republic of Kazakhstan.

2. Chambers of Legal Advisers, members of Chambers of Legal Advisers and clients shall be entitled to complain to the authorized body about violations of the legislation of the Republic of Kazakhstan on legal assistance, rules and standards of legal assistance provision, and the Code of Professional Ethics.

3. Upon the receipt of a complaint, the authorized body shall send it to the respective Chamber unless the Chamber had earlier considered the complaint.

4. If the Chamber has already considered the complaint, the authorized body shall consider it in accordance with the procedure established by legal acts of the Republic of Kazakhstan.

Following consideration of the complaint, the authorized body shall be entitled to impose on the Chamber appropriate sanctions in the form of an order, a warning and other sanctions as prescribed by this Law and other legal acts of the Republic of Kazakhstan.

If the Chamber fails or delays taking actions in accordance with the order, the warning, the authorized body shall initiate imposition of a sanction in the form of exclusion of the Chamber from the Register of Chambers of Legal Advisers.

5. Where there is evidence of a violation in the actions (omissions) of the Chamber of Legal Advisers, decisions of its administrative bodies, they may be subject to the sanction in the form of exclusion from the Register through legal proceedings.

Article 103. State Control and Monitoring of Chambers of Legal Advisers

1. The authorized body shall monitor compliance of Chambers of Legal Advisers with requirements of the legislation of the Republic of Kazakhstan on legal assistance, rules and standards of legal assistance provision and the Code of Professional Ethics.

2. Activities of Chambers of Legal Advisers shall be controlled through audits and other forms of control.

3. A decision of the authorized body to audit activities of the Chamber of Legal Advisers shall be based on alleged violations by the Chamber of the legislation of the Republic of Kazakhstan on legal assistance, rules and standards of legal assistance provision and the Code of Professional Ethics, reported by individuals and legal entities, government agencies, local authorities, and law-enforcement agencies.

4. In the case of discovery of violations of the legislation of the Republic of Kazakhstan on legal assistance, the authorized body, the territorial justice agencies shall send to the Chamber of Legal Advisers a notice obliging them to correct the violations and take other measures in accordance with this Law and other legal acts of the Republic of Kazakhstan.

The Chamber of Legal Advisers shall examine the notice and provide a motivated and substantiated response.

In case of a failure to correct the violations within the established time limit, the authorized body, the territorial justice agencies may apply to the court for enforcing correction of detected violations of the legislation of the Republic of Kazakhstan or for excluding the respective entity from the Register of Chambers of Legal Advisers.

Chapter 7. Final and Transitional Provisions

Article 104. Procedure for Entry into Force of This Law

1. This Law shall enter into force in ten calendar days from the day of first official publication with the exception of subparagraphs 6) and 10), paragraph 6, Article 34, Article 37, subparagraph 8), paragraph 4, Article 78, and Article 79 of this Law that shall enter into force on January 1, 2020.

2. Individuals and legal entities rendering legal assistance before this Law enters into force, shall bring their activities in compliance with requirements of this Law within one year from the date of its official publication.

3. Bar associations, the Republican Bar Association that had been operating before this Law entered into force shall, within six months from the date of its publication, bring their activities in compliance with requirements of this Law, including the procedures for electing chairs, forming administrative bodies of bar associations, the Republican Bar Association, and shall be re-registered with justice agencies.

4. The following laws shall be deemed to have lost force:

- 1) Law of the Republic of Kazakhstan “On Advocacy” of December 5, 1997 (Gazette of the Parliament of the Republic of Kazakhstan, 1997, No 22, p. 328; 2001, No 15-16, p. 236; 2003, No 11, p. 65; 2004, No 23, p. 142; 2007, No 2, p. 18; No 9, p. 67; No 10, p. 69; 2009, No 8, p. 44; No 19, p. 88; No 24, p. 130; 2010, No 5, p. 23; 2011, No 23, p. 179; 2012, No 4, p. 32; No 6, p. 44; No 10, p. 77; 2013, No 14, p. 72, 74; No 15, p. 76; 2014, No 10, p. 52; No 11, p. 61; No 16, p. 90; No 19-II, p. 96; 2015, No 16, p. 79; No 20-VII, p. 115, No 23-II; p. 170, 2016, No 7-II, p. 55);
- 2) Law of the Republic of Kazakhstan “On State-Guaranteed Legal assistance” (Gazette of the Parliament of the Republic of Kazakhstan, 2013, No 14, p. 73; 2014, No 19-I, 19-II, p. 96; 2015, No 10, p. 50, No 20-IV, p. 113, No 22-I, p.141).

President of the Republic of Kazakhstan

ANNEX 2:

**Concept
of the Draft Law of the Republic of Kazakhstan
“On Legal Practice and Legal Aid”**

1. Title of the Draft Law

The Law of the Republic of Kazakhstan “On Legal Practice and Legal Aid” (hereinafter the Draft Law).

2. Rationale for the Draft Law

The Draft Law has been developed in the pursuance of provisions of the Concept of Legal Policy of the Republic of Kazakhstan for 2010-2020, approved by Decree #858 of the President of the Republic of Kazakhstan of August 24, 2009 (hereinafter – the Concept). The Concept sets a number of priorities for development of the law-enforcement and judiciary systems and human rights institutes, including the need for improving the specialized institutes engaged in protection of rights and freedoms of citizens. In this regard, the Concept underscores the need for enhancing the mechanism for realization of citizens’ constitutional right for access to qualified legal aid. The Concept also highlights importance of improving the legal aid system, particularly provision of legal aid to low income groups.

The Concept underlines the leading role of the Bar as the core of legal aid services and sets forth the following priorities for improving legal aid delivery to citizens:

- consistent solution of the problem of unequal delivery of attorney services in urban and rural areas;

- correction of the system of administration of fees of attorneys providing free legal aid. The Concept offers making this system consolidated and transparent to enable a more efficient use of public funds;

- introduction of mandatory professional indemnity insurance of attorneys, taking into account foreign experience.

The notary is another institution providing qualified legal aid. In addition to setting directions for improving the legal profession, the Concept underlines the need for giving normative and legal definition of the role of the notary as part of the legal infrastructure that ensures additional stability and legal security of relations in civil circulation, quality protection of the rights and legitimate interests of citizens and organizations. The national model of the notary should ensure the availability of notarial assistance throughout the country.

Another reason for drafting the law are the instructions set forth in the Protocol of the Meeting of the Legal Policy Council under the President of the Republic of Kazakhstan of February 8, 2017 (hereinafter – the Protocol). The Protocol underlines the need for further development of legal aid services to ensure their high quality and accessibility, primarily for vulnerable groups and groups residing in remote regions.

The Protocol provides for developing proposals to improve the sphere of legal services with the aim of:

- promoting quality and accessibility of legal services;

strengthening the Bar, including through stepping up requirements for lawyers. In this case, consider the possibility of introducing professional indemnity insurance for attorneys; introducing a possible specialization of attorneys in criminal, civil and other categories of cases.

These measures are expected to be implemented through the development of a separate law. The subjects of regulation of this law under the Protocol can be:

- delivery of the entire range of legal services;
- admission to the market of legal services, including through greater professionalization of representation in courts;
- expansion of legal services based on “pro bono” principles, which means providing legal aid free of charge to certain categories of citizens;
- determination of requirements for training legal professionals.

The directions for improving the qualified legal aid system described in the Concept and the Protocol imply implementation of a set of legislative and organizational measures.

The main direction of the national law development consists in implementation of legal concepts of the Constitution of the Republic of Kazakhstan. In accordance with paragraph 3, Article 13 of the Constitution of the Republic of Kazakhstan, everyone has the right to qualified legal aid. Where provided for by the law, legal aid shall be rendered free of charge.

The idea of the mentioned constitutional norm finds its consistent development in the law being drafted by creating mechanisms that ensure participation of qualified entities in the provision of high-quality legal aid. Many professionals - attorneys, notaries, private practitioners, and others – are engaged in legal aid provision, however, only activities of attorneys and notaries are regulated by special laws. Private practitioners are not statutorily referred to as entities engaged in legal aid provision. There are no legal norms to guarantee provision of qualified legal aid by the mentioned professionals, which has a negative impact on the protection of human and civil rights and freedoms. At the same time, the share of their participation in legal aid services is substantial.

In this context, the draft law defines as one of its priorities the need for developing a legal framework for activities of private practitioners.

Moreover, it suggests mechanisms for improving activities of attorneys and notaries to ensure participation of competent professionals in legal aid provision.

For the purpose of comprehensive legal regulation of legal aid, it would be reasonable to develop the Law on Legal Practice and Legal Aid.

The Draft Law will create a basis and define common priorities in the sphere of organizing the provision of the entire range of legal services. At the same time, it will contribute to the free, progressive development of the legal community and legal aid services.

In this regard, the draft law proposes to revise the existing legal aid model.

It should be noted that in accordance with paragraph 9 of Article 26 of the Law of the Republic of Kazakhstan “On Legal Acts”, when introducing amendments and (or) additions to the text of a regulatory legal act in a volume exceeding half of the text of the legal act, a new version should be adopted.

When redrafting laws, an article should be the unit for determining the volume.

Taking into account that the volume of planned amendments and additions amounts to more than 50 percent of the Law of the Republic of Kazakhstan “On Advocacy”, we suggest adopting a new version of the Law of the Republic of Kazakhstan, incorporating the norms of the laws “On Advocacy and “On the State-Guaranteed Legal Aid”.

1) The main concept of improvements

Considering legal aid as an activity of a professional attorney, it should be noted that there is no comprehensive legal regulation of this sphere in Kazakhstan.

The sphere of legal aid is represented in the country by different groups of participants varying in degrees and terms for regulating their activities. At the same time, there are no uniform minimum quality standards for the provision and content of legal aid. There is no system for analyzing the dynamics and problems of development of legal aid services, as well as the general level of quality of such aid.

The professional community of lawyers is developing in a disjointed and unsystematic manner, which undoubtedly affects the quality of legal aid. The State remains the main regulating authority in this sphere, influencing the formation of common approaches to regulation exercising legislative control and providing state-guaranteed legal aid.

This pattern of development of legal aid services does not contribute to improvement of their quality and formation of a conceptual vision of future development of this sphere, which is incapable of satisfying the public needs against the background of dynamic socioeconomic transformations.

At the same time, in present-day conditions, it is the professional community that should regulate the relevant sphere of social relations.

Legal services should be oriented at the interests of the client and meet the necessary standards. At the same time, legal aid recipients should have an opportunity to choose between legal aid providers.

In this regard, we believe that **the main principles of legal regulation** in this sphere should be:

- ensuring the rule of law by increasing legal awareness of legal aid providers;
- increasing and strengthening the status of legal profession;
- improving the access to qualified legal aid and justice;
- protection and promotion of the interests of legal aid recipients (client-oriented provision of legal aid);
- development and maintenance of competition in the sphere of legal aid (legal services);
- promotion of an independent, professionally diversified and effective legal community;
- freedom and encouragement of adherence to the principles of professional conduct and professional ethics;
- creation of grounds for providing legal aid on the pro bono basis.

2) The System of Principles of Legal Aid Provision

To ensure the unity of approaches in legal regulation and legal aid provision, it would be appropriate to formalize a **system of principles**. Thus, legal practice and legal aid provision will be based on the principles of:

- 1) the rule of law;
- 2) independence of legal aid providers;
- 3) respect and protection of the rights and freedoms of the client;
- 4) legal aid provision in the interests of the client;
- 5) attorney-client privilege;
- 6) compliance with the norms of professional and ethical conduct;
- 7) freedom to determine the extent and arrangements of legal aid;
- 8) compliance with high quality standards of legal aid;
- 9) respect for colleagues;
- 10) accessibility of legal aid.

At the same time, the legal aid principles form an interconnected system. Each principle is implemented in conjunction with others.

However, the proclamation of the principles of legal aid provision would not have any effect without the creation of a **legal aid system** that would allow setting legal aid standards; determining the requirements for professional activity; developing ethical standards for the activities of legal aid providers; analyzing legal aid quality and eliminating identified shortcomings based on results of the analysis.

3) Self-Regulation

It is suggested to create a system of self-regulation that would allow developing the legal aid sphere by efforts of the professional community.

Legal aid providers would unite in self-regulating organizations - Chambers of Legal Advisers.

Such chambers will be formed on the basis of mandatory membership of professional lawyers providing legal aid in the form of representation of individuals in courts (hereinafter - legal advisers). The draft law will establish the legal status of a legal adviser (definition, requirements, rights and duties, etc.).

At the same time, one of the conditions for providing legal aid by such entities will be the conclusion of a professional indemnity insurance contract (imputed insurance).

Legal advisers, providing other types of legal aid, will have the right to join the chambers of legal advisers voluntarily.

It is recommended that the existing structures based on mandatory membership of notaries, attorneys and private bailiffs should be maintained in view of the special status of these entities in the system of state-guaranteed legal aid.

To ensure free association of representatives of the legal profession in self-regulating organizations and diversification of the legal community with a view of improving it, upgrading skills and promoting competition, it seems appropriate to formalize in legislation conditions of functioning of Chambers of Legal Advisers under the principles of plurality.

In order to remove property barriers, it is proposed to prohibit payment of entrance fees as condition for joining a qualified bar association. It is proposed to establish membership fees in the Chamber of Legal Advisers.

This would ensure accessibility of membership in professional associations of qualified lawyers.

The Chambers of Legal Advisers will perform:

methodological functions (development of minimum standards for rendering legal aid, professional development of members of the Chamber, etc.);

organizational functions (maintaining the register of members of the Chamber, representing interests of its members in state agencies, non-governmental organizations, including foreign and international, etc.);

regulatory functions (establishment of requirements for members of the Chamber of Legal Advisers, their activities, approval of the Charter of the Chamber, etc.);

monitoring (the compliance of members of the Chamber with the requirements of legislation on legal aid provision, legal aid standards, the Code of Professional Conduct, etc.).

Along with the collective and executive body, the organizational structure of the Chambers of Legal Advisers implies the establishment of special bodies, such as the Auditing Commission and the Disciplinary Board.

The main purpose of establishing the Disciplinary Board is to ensure the independent examination of complaints and appeals against actions (omissions) of members of the Chamber in case they violate the requirements of the legislation of the Republic of Kazakhstan on legal aid, ethical standards of legal practice, and legal aid standards.

The Auditing Commission will monitor the financial and economic activities of the administrative bodies of the Chamber of Legal Advisers.

4) Provision of Comprehensive Social Legal Aid (Pro Bono)

The Concept of Legal Policy gives priority to improvement of the legal aid system, especially for people with low incomes.

In order to improve the existing mechanism of state-guaranteed legal aid, we offer to move from the "ex officio" model to a mixed model, involving the introduction of the pro bono institute.

It should be noted that the existing "ex officio" model of legal aid provision is prevalent in the countries of Eastern Europe and the former USSR and does not correspond fully to the realities of the socioeconomic development of Kazakhstan.

The existing model of state-guaranteed legal aid fails to ensure the exercise of the constitutional right to qualified legal aid by persons with low incomes. At the same time, in conditions of intensive development of market relations, the existence of such entities is natural and the need for ensuring the constitutional right of this category of persons is obvious. This approach is reflected in the Concept of Legal Policy until 2020.

International practice analysis shows rewarding experience of legal aid provision for the public good – "pro bono", which is typical for the mixed model of legal aid.

The Pro Bono Declaration of the International Bar Association (2008) states that "pro bono legal service is work by a lawyer of a quality equal to that afforded to paying clients, without remuneration or expectation of remuneration, and principally to benefit poor, underprivileged or marginalized persons or communities or the organizations that assist them".

Thus pro bono is a compensatory mechanism applied in cases when the state system of legal aid provision fails.

Pro bono models vary in foreign law practice. It should be noted that pro bono principles first appeared in the United States. Thus, the American Bar Association recommends allocating at least 50 hours per year for charity work, and in England, a pro bono week has been celebrated since 2002, which encourages and promotes free legal aid.

Pro bono refers to one of the manifestations of social responsibility.

Representatives of the legal community, which is a civil society institution, should realize their social responsibility for its development.

The trend of social responsibility is not a new phenomenon in society. Its manifestations have been already enshrined in the current legislation. Thus, in accordance with the Entrepreneurship Code of the Republic of Kazakhstan, one of the principles of interaction between business entities and the state is the social responsibility of entrepreneurship.

The proposed pro bono model implies delivery of voluntary, free of charge, comprehensive legal support from the moment of application up to the final resolution of the case (legal situation). In view of the introduction of the pro bono institute, it is proposed to use for the purposes of this Draft Law the term "comprehensive social legal aid".

The provision of the comprehensive social legal aid should be voluntary for legal aid providers. It should be their right, not the obligation. The comprehensive social legal aid becomes obligatory only if legal aid providers have assumed corresponding obligations.

Persons in difficult life situations, participants of the Great Patriotic War and persons equated to them, disabled persons of Groups 1 and 2, age pensioners, and others should be entitled to receive such aid.

The extent and procedure for rendering comprehensive social legal aid shall be established by the Chambers of Legal Advisers and membership-based associations of legal aid providers.

In order to encourage legal aid providers to render the comprehensive social legal aid it is recommended to establish a number of incentives.

Thus, if the provision of comprehensive social legal aid leads to a positive outcome in the form of monetary compensation for the client, the provider, given the client's consent, should have the right to seek remuneration amounting maximum to ten percent of the imposed financial penalties, as well as reimbursement of costs related to the state fee payment.

5) Legal Practice

Legal practice is regulated by Law of the Republic of Kazakhstan "On Advocacy" #195 of December 5, 1997 (hereinafter - the Law).

In accordance with the Law, an attorney shall be a citizen of the Republic of Kazakhstan who has a higher legal education and has obtained a license to practice law, who is necessarily a member of the Bar Association and who provides legal assistance on a professional basis within the framework of legal profession regulated by the Law.

At present, 12,589 citizens of the Republic of Kazakhstan are licensed to practice law. In fact, only 4,683 persons or 37% of the total number of those who have the license are attorneys (persons who have joined the Bar Association), which is 1 attorney per 3,900 people. In **Germany**, there is 1 attorney per 500 people, while in **France** - 1 attorney per 1,200 people.

This number of attorneys is insufficient to provide qualified legal aid to the entire population of Kazakhstan. One of the main reasons for the shortage of attorneys is the high entrance fee, which currently amount to 680-800 thousand tenge. This is the main obstacle to engaging in legal procession.

Besides, mandatory internship in territorial bar associations costs from 136 to 272 thousand tenge per year.

Thus, to start professional activity, an applicant for the status of attorney has to pay on average about 1 million tenge.

The above circumstances make the legal profession inaccessible for young lawyers.

Moreover, before admission to the Bar, an applicant has to pass several stages (to receive a higher education, to undertake internship and certification) to confirm his/her qualification. The entry fee is not aimed at confirming professional qualities, but is an additional property barrier.

Meanwhile, material needs of the Bar are met by target contributions and membership fees.

In this regard, it is recommended to revoke the requirement for paying entry fees to the Bar in order to make legal profession more accessible for new specialists. At the same time, it is recommended to maintain the mandatory target contributions and membership fees, as well as voluntary contributions. Such changes will not entail a decrease in the income to the Bar, since revocation of the entry fees will lead to increased number of persons in legal profession and the total amount of membership fees.

With this barrier removed, the number of attorneys will increase, boosting competition between them and promoting their professional development. All this will improve the quality of legal aid they provide to clients.

It is recommended to revise the procedure for certification in order to improve qualitative composition of the Bar.

It is also recommended to change the approaches to the formation of the Certification Commission in order to ensure its independence and objectivity in checking professional qualifications of applicants.

It is also necessary to revise the procedure for drawing up tests and planning practical activities. According to the Law of France "On the Reform of Certain Judicial and Legal Professions" of 1971, to obtain the status of attorney, an applicant passes the final

examination and receives the corresponding certificate (CAPA). The procedure for passing the exam is quite complicated and consists of written (drafting legal documents) and oral parts (oral testing of knowledge of legal bases of professional activity, testing of knowledge of various branches of law at the candidate's choice, a conversation in a foreign language, and discussion with members of the examination board of candidate's performance of his/her individual training program). A candidate is considered to have successfully passed the final examination if he/she has scored 130 or more points. After receiving the CAPA, the attorney takes an oath before the appellate court.

The draft law will improve the provisions related to the certification, including comprehensive computer testing and practical activities. Capabilities of the unified information system of attorneys, which is currently being introduced, will be widely used during the certification in order to reduce the influence of human factor in assessing professional qualities of the applicants. It is recommended to use the unified information system for compiling lists of applicants and test tasks, evaluating test results, etc.

Detailed regulation will be provided for by subordinate legislation.

It is necessary to set the requirements for taking an oath and wearing robes by attorneys (as it is the case in **Austria** and **Georgia**). The requirement to take an oath while entering the legal profession increases importance of the profession in the eyes of society, the state and the attorney. The Law of Georgia “On Advocates” contains the following oath: “I swear to be loyal to the ideas of justice, carry out an advocate’s duties in good faith, and protect the Constitution and the laws of Georgia, the code of professional ethics of advocates, and the human rights and freedoms.”

The Kazakh legislation sets a requirement for judges and prosecutors to wear corresponding robes and uniforms. We believe that special provisions should be introduced to enable attorneys to wear robes in court hearings in order to implement the constitutional principle of equality before the court, increase the authority and moral security of attorneys and recognition of attorneys during their participation in civil and criminal proceedings. Such examples exist in **Austria, Georgia, Turkey, and Germany**.

Under the current legislation, attorneys have the opportunity to choose between the following forms of activity: legal counselling, individual activity or association in a law firm. At present, there are 16 territorial bar associations in Kazakhstan, comprised of 203 legal aid agencies and 149 law firms, many of which consist of one attorney. In fact, this organizational form does not differ from individual legal practice.

Analysis of law firms operating as non-profit organizations shows that they fail to meet modern requirements and to promote effective collective activities of attorneys, which makes them less competitive than law firms organized and operating like limited liability partnerships.

In this view, it is recommended to revise the mechanism of operation of law firms.

The Draft Law provides that attorneys, who have established a law firm, will sign a partnership agreement in simple written form. Under the agreement, the partners pledge to join their efforts for providing legal aid on behalf of the partnership. A law firm will be entitled to enter into an agreement on provision of legal aid. These proposals will enable functioning of law firms as collective entities providing legal aid. Examples of such collective entities exist in the legislations of **Germany, Georgia, and the Russian Federation**. As of January 1, 2016, **in Germany**, there were 3,716 partnerships with limited professional liability, 764 law firms limited by shares, 92 LLPs and 23 lawyer joint-stock companies. Most attorneys work in offices, individual law firms, and simple partnerships. To practice law in **Georgia**, an attorney can individually or jointly with colleagues establish a law firm in the form of a partnership or an income-generating legal entity, whose rights are determined in accordance with Law of Georgia “On Entrepreneurs”.

It is proposed to improve the mechanism of professional development of attorneys.

Under the current legislation of the Republic of Kazakhstan, the Republican Bar Association (hereinafter - RBA), territorial bar associations perform certain functions related to professional development of attorneys. Yet, the law does not set any requirements for frequency and content of professional development courses. For this purpose, it is necessary to introduce mandatory annual courses for professional development of attorneys, as it is the case in **France**, where this matter is dealt with by special schools, which conduct seminars on various branches of law, deontology, and novelties in legislation. The attorneys independently choose the classes they need. During a year, they have to take at least 20-hour development training. In the first year of practice, at least 10 hours should be devoted to deontology (the science of duty and morality). If an attorney specifies some specialization, then at least 10 hours should be devoted to this specialization. At the end of each seminar, attorneys pass testing and receive certificates of graduation in a relevant area, confirming their knowledge. The attorneys present their certificates to the respective Bar Councils. The absence of certificates of attorney's annual 20-hour training in the Bar Council is regarded as a disciplinary offense.

Professional development of attorneys will also be facilitated by the establishment of standards and procedures for professional development by the Republican Bar Association.

The practice of functioning of the Bar shows that quality of attorneys' work has worsened. The number of complaints against attorneys remains high. Complaints from individuals and legal entities are examined by the bar association; 80% of complaints are merely discussed, i.e. attorneys are not made legally accountable. They do not compensate for damages inflicted by non-fulfillment or improper fulfilment of their professional duties.

In this part, it is necessary to consider the introduction of professional indemnity insurance of attorneys within the framework of their legal aid agreements (imputed insurance). In **France**, the Law "On the Organization of Legal Profession" of 1991 introduced compulsory professional liability insurance of attorneys. The legislators have set the minimum annual insured amount at 2 million francs per lawyer. In **the United States**, each of the 52 states has its own insurance system with individual insurance model prevailing. Only Oregon applies a collective insurance system. In **Georgia**, attorneys are obliged to insure their professional indemnity in accordance with the procedure and in cases provided by law to compensate for possible material damages to their clients. In **Estonia**, professional indemnity insurance is mandatory. Article 12 of the Federal Law of **Switzerland** "On Freedom of Movement of Attorneys" of 2000, provides for compulsory professional indemnity insurance depending on risks associated with attorneys' activities.

In **France**, professional indemnity insurance is mandatory for attorneys. It covers all professional errors of attorneys that can cause harm or entail loss of expected gain for their clients or third persons. The errors can consist in breaches of procedural deadlines for submitting statements or appeals (violation of procedural deadlines; improper completion of documents; failure to notify the third persons about consequences of performed legal actions, causing harm to such persons; loss or damage of documents received by the insured person (policyholder) from the client (proxy giver) for legal aid provision; illegal disclosure of information covered by attorney-client privilege, etc.).

The issues related to remuneration for legal services are regulated in foreign legislation and each country has its own independent model. The Draft Law proposes that the Republican Bar Association should develop and approve a non-binding fee schedule of legal aid services. This would allow citizens to compare fees and determine an average cost of legal services, which will prevent overpricing.

Thus, the cost of legal aid services established by attorneys will eventually approach a fair value.

French legislation prohibits making the amount of attorney's fee conditional on the outcome of the case. The size of fee depends on complexity and publicity of the case and property status of the client.

In **Germany**, the Law "On Attorneys' Fees" came into force on July 1, 2004, replacing the Regulation on Remuneration of Attorneys. The Law sets attorney's fees and allows concluding individual agreements on attorney's fees with clients, at the same time prohibiting agreements on "contingency fees". In special cases, attorneys can take into account the client's personal circumstances, such as insolvency, reducing the fee or refusing from it after completion of the case.

Article 16 of the Law of **Poland** "On Legal Profession" of May 26, 1982 contains provisions on remuneration for legal services. Thus, paragraph one of this article notes that fees for legal services should be determined by agreement with the client. Paragraph 2 of the same article specifies that the Minister of Justice, upon consultation with the Polish Bar Association and the National Association of Legal Advisers, shall determine by his/her resolution fees for professional legal services in judicial bodies, which enable courts to order costs for legal representation.

Case law shows that territorial bar associations do not always bring attorneys to disciplinary responsibility. Attorneys have many times avoided disciplinary responsibility for committed violations and leaving citizens dissatisfied with their services.

In accordance with the Law, the disciplining functions are carried out by the Council of the Bar Association (Article 30 of the Law). At the same time, the Council fulfills the current functions of the Bar Association related to administrative and economic matters, protection of professional rights of attorneys, etc. (Article 24 of the Law). Accumulation of different functions within the competence of one body creates a conflict of interest and a high probability of passing biased decisions on disciplinary responsibility of lawyers.

In order to avoid such situations, we suggest forming an independent body within the Bar Association to monitor the compliance of attorneys with professional and ethical requirements, and to resolve issues of disciplinary liability. At the regional level, disciplinary boards of attorneys should be set up comprised of 6 attorneys, 3 representatives of the authorized body, and 2 retired judges. The boards can be chaired only by an attorney. The disciplinary boards will be guided by regulations approved by the Republican Bar Association (RBA). The Draft Law extends authorities of the RBA for monitoring activities related to examination of disciplinary cases and imposition of disciplinary penalties. The Disciplinary Board of the Bar will be set up based on the same composition principle as the disciplinary boards of attorneys.

Here are several examples of functioning of separate disciplinary bodies in other countries. In **Estonia**, disciplinary liability issues are dealt with by the Court of Honor. According to Article 15 of the Estonian Law "On the Bar Association", the Court of Honor considers disciplinary cases of attorneys and other issues within its jurisdiction. The Court of Honor is formed for a term of four years and consists of seven members: four sworn advocates elected by the General Meeting of the Bar Association, two judges elected by the Plenum of the Supreme Court of Estonia, and one lawyer appointed by the Council of the Faculty of Law of the University of Tartu.

In the **Netherlands**, each court of appeal has a disciplinary council whose territorial jurisdiction coincides with the jurisdiction of the court of appeal and which deals with disciplinary matters in the first instance. The disciplinary council is located on the premises of the court. According to Article 46 b of the Law of the Netherlands "On Attorneys", each disciplinary council comprises a chairman, maximum 13 vice-chairmen, maximum 15 associate attorneys and maximum 30 deputy associate attorneys. The Chairman and Vice-Chairmen are appointed by the Minister of Security and Justice from among the judges.

Associate attorneys and their deputies may be only attorneys practicing in the corresponding territory and registered in the Netherlands for more than 5 years. They are elected by the Council of Representatives from among the candidates nominated by the councils of local bar associations.

In **Germany**, each district, where there is a bar association, has a Disciplinary Court of Attorneys. The disciplinary court consists of presiding judges and members of the respective bar association. Members of the disciplinary court are appointed by the Regional Judicial Administration. They should be selected from the list of candidates presented to the Regional Judicial Administration by the Council of the Bar Association (the list should contain 50% more candidates than required). Only the persons eligible to the Council of the Bar Association can be the candidates. Members of the Disciplinary Court of Attorneys are appointed for a term of four years with possible reappointment for a new term.

The Draft Law proposes strengthening the RBA functions. The Republican Bar Association as a self-regulating body shall represent and protect interests of bar associations and attorneys in government agencies and other organizations in the Republic of Kazakhstan and abroad, coordinate activities of bar associations, ensure high quality of legal aid provided by attorneys. However, the RBA functions are of coordinating nature and mainly concern activities of the RBA or the bar associations (drafting of quarterly reports, disciplinary practices, information support).

The RBA powers involve no effective mechanism to monitor the territorial bar associations and quality of legal aid provided by attorneys. There is no statutory mechanism establishing uniform quality standards and criteria for legal aid provision, quality control and compliance with professional ethics by concrete attorneys, etc.

It is recommended to entitle the RBA to adopt internal documents regulating activities of attorneys by agreeing some of them with the authorized body (this could concern development and approval of a uniform warrant of attorney, a robe and its description and attorney's ID; procedure for filling out and filing inquiry of attorney; Internship Regulations for Attorneys' Interns, procedures for defining potential specialization of attorneys by categories of cases, legal aid provision standards, legal aid quality criteria, etc.). It is also recommended to entitle the RBA to respond effectively to violations committed by members and bodies of bar associations, etc.

It would be advisable to limit intervals for membership in the bar bodies and in the RBA. The Draft Law reads that the bar bodies, the Auditing Commission and the RBA should be elected for a term of four years, but it specifies no intervals with which attorneys can be elected to these bodies.

Hence, it is recommended to define the intervals for election to the administrative bodies of the bar.

It is also recommended to toughen the requirements for the establishment and functioning of the Auditing Commission in order to ensure transparency of financial activities of the bar associations and the RBA.

The Draft Law suggests excluding the use of the warrant of attorney.

Under the current legislation, the warrant of attorney confirms power of an attorney to conduct a concrete case. However, this practice is ineffective and archaic and there are no analogues of such warrants in the countries with developed legal tradition.

In fact, the need for the warrant creates obstacles in providing qualified legal aid. The leadership of a law firm or a legal advice office may refuse to issue a warrant or may issue it with a delay. This confirms unjustified dependence of attorneys on the leadership of the organizations in which they work.

Today, the status of attorney has changed radically. The powers of attorney are confirmed by his/her inclusion in the register of licensed attorneys and by attorney's ID. At

the same time, the powers of an attorney to conduct a specific case can be confirmed in various ways. For example, in civil proceedings they can be stipulated in the power of attorney. In criminal and administrative proceedings, the powers can be confirmed by proxy giver's consent reflected in the protocol of proceedings.

The Draft Law suggests creating a web portal – attorney's virtual office - that would optimize legal aid services, as well as an official website of the RBA to serve as a single platform for the legal profession in Kazakhstan. Through this system, attorneys will be able to carry out all their activities, including registration of legal aid agreements, filling out and filing inquiries, complaints and applications, and finalization of reports and statistics of the conducted cases.

Moreover, the Draft Law specifies the need for publishing information on the activities of the republican and territorial bar associations on the websites of the RBA and territorial bar association in order to ensure transparency of financial performance, disciplinary cases, access to by-laws, information on planned events, etc.

According to the Draft Law, the website of the RBA should be available for all legal professionals in Kazakhstan, and all territorial bar associations should be able to publish their information in their own sections on RBA's website. The use of the single RBA website by territorial bar associations would minimize their expenses related to creation of their own websites and would form a common information space with a comprehensive professional content, giving legal professionals free access to information from all regions of Kazakhstan. It would also help potential clients to choose attorneys with the particular qualifications and the reputation they need.

3. Objective of the Draft Law

The Draft Law has been developed for comprehensive improvement of legal practice and legal aid provision.

4. Scope of the Draft Law

The Draft Law regulates public relations in the field of legal practice and legal aid and defines legal mechanisms for the realization of rights and duties of individuals and legal entities engaged in legal practice and legal aid provision.

5. Structure and Content of the Draft Law

The Draft Law consists of four sections.

Section one - General Provisions - determines general terms for provision of legal aid. It defines principles of legal aid provision; types and forms of legal aid; legal status of legal aid providers; competences of the government and the authorized body in the field of legal aid, etc.

Section two - State-Guaranteed Legal Aid – regulates general conditions and procedures for providing state-guaranteed legal aid.

Section three - Legal Practice – includes norms defining legal status of attorneys as the main providers of legal aid (rights and duties, guarantees, professional indemnity insurance); grounds for acquiring the legal status of attorney (requirements for applicants, internship, certification, licensing, membership conditions); organizational forms of legal practice, administrative bodies of the RBA, territorial bar associations, their powers, monitoring of activities of members of bar associations and their administrative bodies, disciplinary liability, complaints against actions (omissions) of members and administrative bodies of bar associations, etc.).

Section four - Provision of Legal Aid by Legal Advisers – defines legal status of legal advisers; self-regulation model for legal advisers; the procedure and terms of insurance of

professional indemnity of legal advisers; state control and monitoring of legal advisers, etc.

6. Results of Legal Review of Legislative Acts in the Relevant Sphere

Results of legal review of the following legislative acts were taken into consideration while developing the Draft Law:

Law of the Republic of Kazakhstan of July 3, 2013 No. 122 “On State-Guaranteed Legal Aid”;

Law of the Republic of Kazakhstan of December 5, 1997 No. 195 “On Advocacy”.

Thus, in the sphere of state-guaranteed legal aid, the review identified the norms of international acts setting standards for provision of such aid.

In particular, the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress in 1990, oblige governments to allocate necessary funding and other resources for providing legal aid to socially vulnerable groups. In turn, professional associations of lawyers should cooperate in organizing and creating conditions for providing such aid. This approach is expected to be implemented within the framework of the Draft Law through the introduction of comprehensive social legal aid (pro bono), as well as the compensatory nature of the state-guaranteed legal aid.

Analysis of the Law of the Republic of Kazakhstan "On Advocacy" has revealed inefficiently implemented norms on professional development of attorneys.

In this regard, it is recommended to provide for continuous professional development of attorneys. The current legislation imposes this duty on the Republican Bar Association and territorial bar associations, but sets no requirements for frequency and content of professional training.

In this connection, it would be reasonable to pay attention to the experience of Kyrgyzstan. In accordance with the Law of the Kyrgyz Republic “On Advocates and Their Activities”, a training center for lawyers operates in this country as an independent legal entity, dealing with organization of professional development and training of lawyers.

7. Anticipated Legal and Socioeconomic Impacts of the Draft Law

Positive socioeconomic outcomes:

- consolidation of the legal status of legal professionals (attorneys, legal advisors, notaries, private bailiffs);
- enhancement of professional qualification of legal aid providers;
- access to pro bono legal aid for vulnerable groups and persons in a difficult life situation;
- improvement of legal aid quality;
- guarantee of high quality of legal aid provided by attorneys;
- protection of rights, freedoms, legal interests of individuals and legal entities;
- enhancement of the role of bar associations and law firms in organizing delivery of qualified legal aid to the public.

Draft Law adoption should not entail any negative or undesirable socioeconomic or legal outcomes.

8. Required Simultaneous (Subsequent) Harmonization of Other Legislative Acts with the Draft Law

The Draft Law adoption would require invalidation of the existing laws “On Advocacy” of December 5, 1997 and “On State-Guaranteed Legal Aid” of July 3, 2013.

In order to implement the norms of the Draft Law, it is also planned to introduce amendments and additions to the following legislative acts of the Republic of Kazakhstan:

- Code of the Republic of Kazakhstan on Taxes and Other Obligatory Payments to the Budget (Tax Code) of December 10, 2008;
- Criminal Procedure Code of the Republic Kazakhstan of July 4, 2014;
- Code of the Republic of Kazakhstan on Administrative Offences of July 5, 2014;
- Civil Procedure Code of the Republic of Kazakhstan of October 31, 2015;
- Law of the Republic of Kazakhstan “On Notary” of July 14, 1997;
- Law of the Republic of Kazakhstan of January 16, 2001 # 142-II “On Non-Profit Organizations”;
- Law of the Republic of Kazakhstan of March 18, 2002 “On Judicial Bodies”;
- Law of the Republic of Kazakhstan of May 19, 2015 “On Minimal Social Standards and Their Guarantees”;
- Law of the Republic of Kazakhstan of April 6, 2016 “On Legal Acts”.

9. Other Normative Legal Acts Regulating the scope of Draft Law

At present, the issues covered by the Draft Law are generally regulated by the following legislative acts:

- The Code of the Republic of Kazakhstan on Taxes and Other Obligatory Payments to the Budget (Tax Code) of December 10, 2008;
- Criminal Procedure Code of the Republic Kazakhstan of July 4, 2014;
- Code of the Republic of Kazakhstan on Administrative Offences of July 5, 2014;
- Civil Procedure Code of the Republic of Kazakhstan of October 31, 2015;
- Law of the Republic of Kazakhstan “On Notary” of July 14, 1997;
- Law of the Republic of Kazakhstan “On Advocacy” of December 5, 1997;
- Law of the Republic of Kazakhstan “On Enforcement Proceedings and the Status of Court Bailiffs” of April 2, 2010;
- Law of the Republic of Kazakhstan “On State-Guaranteed Legal Aid” of July 3, 2013.

At the same time, these laws only partially regulate the issues set forth in the concept. Moreover, some newly introduced mechanisms require independent regulation. These are:

- self-regulation of legal advisers;
- comprehensive social legal aid (pro bono);
- professional indemnity insurance of legal advisers and attorneys.

10. Available Relevant International Experience: Models of Legal Aid

The following models of state-guaranteed legal aid are used in other states³⁷:

1) *Contract model* (judicare) is a system where a special government agency concludes with an attorney or a law firm a contract on provision of legal aid in a certain number or categories of cases for a remuneration to be paid from the state budget. This model works in Austria, England and Wales, Australia, Norway, the Netherlands, Scotland, Sweden, Canada and in some states of the USA. This model has two options:

a) *Pure judicare model* is a system where attorneys receive remuneration for provided legal aid from the State through local administrations, bar associations or other organizations. In some cases, courts refer persons, entitled to receive free legal aid, to attorneys participating in state-guaranteed legal aid programs. Attorneys receive remuneration from the budget either

³⁷G. Zh. Suleimanova, International Experience of Delivery of State-Subsidized Legal Aid.

for a specific type of legal aid (for example, a fixed amount for a divorce by mutual consent) in the form of an hourly payment or based on the maximum remuneration for a service, regardless of its duration.

6) *Duty counsel model* is a system where attorneys work on a part-time basis with daily remuneration for their service as defense counsels or representatives where it is necessary to ensure the provision of free legal aid.

2) *Public (state) defender model* is a system where the State or an authorized body in the legal aid system establishes a legal aid provider - a system of offices (bureaus, councils, services, centers, commissions, etc.) on a territorial basis to ensure access to legal aid for low-income groups. As a rule, these offices operate under the following scheme: a duty officer conducts an initial interview with a client who applied for legal aid to find out the nature of the legal problem under consideration. If the problem is simple, legal aid can be provided immediately in the form of legal information or advice, or by referring the applicant to a body or organization where the problem can be resolved without the participation of attorneys from the office. If the problem resolution requires a longer time, the client is referred to a concrete attorney in the office, specializing in a particular area of law. Such a model exists in the UK and Wales, USA, Israel, Scotland, Lithuania, Russia, Ukraine and some other countries.

3) *Ex officio model* is a system where the State represented by bodies involved in criminal proceedings (prosecutor, investigator, police, court), appoints, through a professional organization of lawyers, a defender or a representative to provide legal aid to a person and pays for his/her work from the state budget. This model is typical for most post-Soviet states and the former socialist countries of Central and Eastern Europe.

4) *Mixed model* is a system that combines elements of the above systems and other systems: provision of free legal aid through an independent state organization - bureau, council, service, center, etc. (i.e. the public defender model), with involvement of private practitioners based on a contract concluded on case-by-case basis (that is, the contract model), as well as using other models (legal clinics, the “pro bono” model (i.e. gratuitous provision of legal aid), paralegals and other models.

Legislative Regulation of Legal Aid

Germany was the first to introduce free legal aid for low-income groups.

In Germany, legal aid can be provided in civil (including family law), administrative, labor and even constitutional disputes in courts, if any party is unable to pay court fees and attorney fees.

Legal aid provision is governed by the Act on Advisory Assistance and Representation for Citizens with a Low Income, adopted in 1980 (Advisory Assistance Act)³⁸. The law does not regulate aspects of legal aid in criminal cases, since this procedure is regulated by the Code of Criminal Procedure. Advisory assistance also can be delivered to foreign citizens, unless a case pertains to some aspects of international law.

The grounds for obtaining legal assistance include inability of a person to pay for legal services, a high probability of positive outcome of the case, and significance of the case.

A request for legal aid is usually submitted along with a draft complaint or a statement of claim to the appropriate court. Such a procedure has certain advantages for the applicant, since it temporarily exempts him/her from payment of court costs.

Legal aid is provided through the exemption from court costs and payment of attorney's fees from the state budget following court decision. The amount paid to a lawyer for delivery of legal aid is regulated in the statutory fee schedule and is much lower than the amount that

³⁸https://www.gesetze-im-internet.de/englisch_berathig/englisch_berathig.html

the lawyer normally can demand from the client in accordance with the normal fee schedule. Thus, at present attorney's services cost the client EUR 15. However, if the legal aid has some positive outcome leading to improvement of the financial status of the client (payment of a debt or compensation), the attorney can apply to the local court for a pre-agreed payment.

Thus, in the German system the court plays the primary role in making a decision on the provision of legal aid to the applicant. Here attorneys are more focused on successful completion of the case, because if they succeed, they can receive full compensation and payment for their services, and if they fail they receive only a minimum fee for legal services they have provided.

In criminal proceedings, legal aid is available only in certain circumstances, depending on severity of committed crime and vulnerability of the accused, but not on his/her financial situation. The latter is taken into account only when estimating his/her ability to reimburse the defense costs.

The **UK** Parliament addressed regulation of provision of legal services by adopting Legal Aid and Advice Act in 1949. From 1950 to 1989, the main entity pursuing public policy in this area was the Law Society³⁹ - a professional organization, representing and regulating activities of solicitors. Inefficient regulation of quality of provided services necessitated the adoption of Legal Aid Act in 1988, under which the Law Society transferred regulation of legal aid provision to the Legal Aid Council, appointed by the Government. The task of the Legal Aid Council was to find an optimal balance of State's cooperation with solicitors. In 1990s, the Council started cooperating with solicitors on a contractual basis under the principle of franchising - the service providers who were entitled to franchise, received the advantage in the form of certain powers.

The Law Society retained the competence of establishing standards and quality criteria for provided services. Thus, the Law Society introduced a model for the accreditation of lawyers, according to which a solicitor who has graduated from a training course approved by the Law Society and passed a practical examination, received the right to deliver services in certain areas. In addition, in 1993, the Council adopted a series of its own standards, known as (Legal Aid Franchising Quality Assurance Specification - LAFQSA).

In 2000, the powers of the Council moved to the Legal Services Commission that began to develop standards for legal aid and advisory services, which eventually resulted in the adoption in 2002 of Quality Mark – unified standards for the provision of legal services. Conditions for obtaining the Quality Mark were developed by the Law Society. Basically, this is a set of standards for effective office management. Different forms of control were introduced, including assessment of the conduct of case, review of case materials, peer checking (practicing lawyers with impeccable reputation), and “secret shopper” check.

In 2013, the Legal Services Commission was replaced by the Legal Aid Agency, an executing agency under the UK Ministry of Justice, which provides legal aid and advice on civil and criminal cases in England and Wales⁴⁰. Such changes were caused by the adoption of the Legal Aid, Sentencing and Punishment of Offenders Act 2012⁴¹ with the aim of strengthening ministerial control over spending of the UK budget for legal aid.

To date, in order to conclude a contract with the Agency, an organization has to be accredited according to the Agency's quality standards - Specialist Quality Mark or Mediation Quality Mark⁴², or according to Lexcel Practice Management Standard⁴³.

³⁹<http://solicitors.lawsociety.org.uk/>

⁴⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372206/laa-framework-document.pdf

⁴¹<http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

⁴²<https://www.gov.uk/guidance/legal-aid-agency-quality-standards#specialist-quality-mark>

Legal aid in criminal cases is provided by the Service of Public Defenders, whose staff consists of lawyers employed by the Legal Aid Agency to render their services in police stations and in the courtrooms. However, most of the sponsored legal services in the criminal sphere are provided by private lawyers who have signed a contract with the Agency and are paid for a particular case.

In the **United States**, legal aid is divided into criminal and civil spheres. Legal aid in criminal cases is guaranteed for persons under criminal prosecution, who cannot afford hiring a lawyer. Section 3006A of Title 18 of the US Code “Crime and Criminal Procedure” establishes a procedure for providing free legal aid to the poor and indigent defendants in criminal cases of federal jurisdiction. In 1963, the US Supreme Court in the case *Gideon v. Wainwright* found that the Sixth Amendment to the Constitution regarding the right to legal aid obliged the government to provide legal aid to those accused who could not afford it. In the United States, a public defender is a lawyer who works in the service of public defenders, i.e. an agency funded by the state and providing legal aid to low-income groups. The court appoints the service of public defenders to protect a defendant, while the service in turn appoints a lawyer to work on the case. Courts can also appoint private practitioners who have agreed to provide their services to low-income clients by concluding a contract that determines the number of cases for a certain period of time, or on the basis of engagement in a particular case.

The service of public defenders is established by local authorities (different in different states) - the city council, the municipality, the mayor's office, etc., which monitor activities of this service without interfering with its daily work. In some large cities (for example, New York) free legal aid organizations are established based on contracts with the city authorities. Such organizations have the status of private non-profit entities. They are also financed from the state and/or municipal budget and can receive donations as well.

In small towns and rural areas, free legal aid to the poor is provided by attorneys who have volunteered to represent interests of the poor, apart from their basic practice. Such attorneys are interviewed by the qualifications commission and are included in the lists of lawyers handling the cases of low-income citizens, which are distributed among all courts of this jurisdiction. Similar lists are drawn up at the federal level. The services of “listed” lawyers are remunerated by the state according to a fee schedule (on hourly or per case basis) approved by a relevant authority⁴⁴.

Legal aid in civil cases is not guaranteed by federal laws, but is delivered by various law firms defending public interests and legal clinics at a reduced price or free of charge.

In 1974, the US Congress established Legal Services Corporation (LSC) under Section 2996 of Title 42 of the US Code. The main task of the LSC consists in financing legal services for poor and low-income citizens in civil and other non-criminal proceedings. LSC distributes over 90 percent of its budget among 133 independent non-profit legal aid programs with more than 800 offices⁴⁵. LSC mainly provides legal aid in the following spheres: healthcare, family law, landlord-tenant disputes, consumer rights, labor law, legal aid to servicemen's families, legal aid to victims of natural disasters. The Corporation's website annually publishes an analysis of the work done⁴⁶.

Legal aid provision to low-income people in the West involves a broader, out-of-the-industry concept of *pro bono publico* (“for the public good”), which consists in providing

⁴³<http://www.lawsociety.org.uk/support-services/accreditation/lexcel/>

⁴⁴V.F. Vlasikhin, Legal Profession and Education in the USA

⁴⁵<http://www.lsc.gov/about-lsc/who-we-are>

⁴⁶<http://www.lsc.gov/sites/default/files/images/TheJusticeGap-ExecutiveSummary.pdf>

professional assistance to charitable, public and other non-profit organizations on a non-refundable basis.

In the United States, legal aid delivery to low-income people is considered professional responsibility of a lawyer. According to the Model Rule 6.1 of the American Bar Association, every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. All states and local associations of lawyers have pro bono committees, in which lawyers can render their services as volunteers. The American Bar Association includes the Standing Committee on Pro Bono and Public Service as its structural unit.

On the website of the Law Society of England and Wales, one can sign a pro bono online charter specifying the name, address, director of the law firm or other person in charge with this direction (pro bono identified contact), which will confirm the conclusion of the pro bono contract between the law firm and the Law Society⁴⁷.

Legal Aid Provision Standards

At the international level, the United Nations Office on Drugs and Crime (UNODC) focused on the standardization of legal aid. The United Nations Guidelines on Access to Legal Aid in Criminal Justice Systems, developed by the UNODC, were approved by the UN Commission on Crime Prevention and Criminal Justice in 2012 as a general guide for States on providing state-guaranteed legal aid.

The Global Study on Legal Aid, conducted by the UN, shows that the main condition for qualifying lawyers for legal aid delivery is proof of passing a professional bar examination (73%), followed by membership in the national bar (60%), registration in the national register of legal aid providers (23%), and passing a special examination for legal aid provision (20%)⁴⁸.

In the United States, the legal aid standards are not specifically oriented at lawyers' activities, but at development of a program of work with clients in this area. Although Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means of August 2013, are not binding, the ABA strongly recommends that law firms, delivering pro bono legal services, shall implement them⁴⁹.

In 2013, the Ministry of Justice of New Zealand adopted revised Practice Standards for legal aid providers. The standards include 12 general principles, sections on general obligations to clients, standards in criminal, family law and mental health⁵⁰.

The Legal Aid Organization of New South Wales, Australia, in cooperation with the Law Society and the Bar Association, have adopted Practice Standards for each panel⁵¹.

In England, as described above, the standards of the Legal Aid Agency "Specialist Quality Mark" and "Mediation Quality Mark", as well as "Lexcel Management Practice Standard" of the Law Society of England and Wales are in force.

Codes of Professional Conduct of Lawyers

In the *United States*, the activities of lawyers are regulated by governments of states and territories, not by federal law. Each state or territory has its own code of professional conduct for lawyers that can be adopted by a corresponding legislature and/or a judicial system of the

⁴⁷<http://www.lawsociety.org.uk/support-services/practice-management/pro-bono/pro-bono-charter/>

⁴⁸https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf#report_legal_16.indd%3A.59503 p. 57

⁴⁹<https://www.americanbar.org/content/dam/aba/images/news/PDF/109.pdf>

⁵⁰<https://www.justice.govt.nz/assets/Documents/Publications/Legal-Aid-Practice-Standards-Feb-17.pdf>

⁵¹<http://www.legalaid.nsw.gov.au/for-lawyers/panels-audit-and-practice-standards/panels-practice-standards>

state. The American Bar Association has published Model Rules of Professional Conduct⁵², which have influenced many states though formally being of advisory nature. The Model Rules cover many topics, including lawyer-client relations, duties of trial lawyers, relations with persons, who are not clients, relations with law firms and associations, public services, integrity of the profession. Respect for confidentiality of clients, impartiality, truth of statements and professional independence are some of the key features of legal ethics.

Some states, including New York, require that applicants for admission to practice should take a professional responsibility course while attending a law school. A state bar association, upon consultation with the court, adopts a set of ethical norms, establishing applicable ethical responsibilities. Since 2013, 48 States adopted the version of the Model Rules of the American Bar Association. California and Maine are the only states that did not accept these rules and developed their own rules instead. Lawyers who do not comply with local ethical standards may be subject to disciplinary sanctions, from private (non-public) reprimand to disbarment.

The American Bar Association is a voluntary professional association of private law. Hence, it does not have legislative or regulatory powers, just like any other non-governmental bar association. Accordingly, the Model Rules are not legally binding for adoption in any state. Yet, the Model Rules, in whole or in part, and sometimes with modifications, have been adopted as rules of professional conduct for lawyers in 49 states, the District of Columbia and four of the five inhabited territories of the USA. The rules of professional conduct or professional responsibility adopted in a particular state are binding for the lawyers of that state.

In **Australia**, the reforms that began on July 1, 2015, have resulted in establishment of a unified system regulating the legal profession in terms of invoicing procedures, discipline procedures and handling of complaints. Inter-Municipal Council for Legal Services has been established to regulate the legal profession and provide legal services. This has led to the adoption of the Unified Code of Conduct for Legal Advisers and the Unified Code of Conduct for Lawyers in 2015.

The states and territories of Australia are regulated through joint regulation, self-regulation and independent regulation.

In the **UK**, a new code of professional ethics for solicitors of **England and Wales** came into force on July 1, 2007.

Procedures for Professional Development of Lawyers

In **the United States**, there are no national rules for Continuing Legal Education (CLE) or accreditation requirements. Each jurisdiction independently decides how to regulate the activities of lawyers. As a rule, this function is performed by the Supreme Court of each jurisdiction and is delegated to special commissions or councils for the professional development of lawyers.

However, various efforts have been made to promote the uniformity of CLE programs in the US jurisdictions. For example, the American Bar Association (ABA) has published Model Rule for CLE⁵³ for individual jurisdictions. This document was adopted by most of the states. It obliges the practicing lawyers in these states to take at least 15-hour annual course of professional development.

⁵² Model Rules of Professional Conduct 1983

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_migrated/russian.authcheckdam.pdf

⁵³ ABA Model Rule for Continuing Legal Education 1989

https://www.americanbar.org/content/dam/aba/administrative/cle/aba_model_rule_cle.authcheckdam.pdf

Similarly, the Continuing Legal Education Regulators Association (CLEreg) has developed a single application form for CLE, a single CLE attendance certification and a CLE distance learning glossary. CLEreg has also developed a CLE manual to help its members manage CLE programs.

In the states with mandatory CLE requirement, lawyers have to receive a minimum number of credits (hours) of the program within a specified period. Furthermore, some jurisdictions require a minimum number of CLE credits for specific topics (for example, ethics, comparative law, elimination of bias, professional responsibility, basic skills, substance abuse, prevention of abuse of power and lawyer-client disputes).

Lawyers in the US usually receive CLE credits upon completing the legal training provided by experienced lawyers. Training can encompass both legal theory and expertise in legal practice. Training participants, as a rule, do not have to undergo competence assurance during the course. The choice of educational materials can be extensive and represent the most modern and advanced thinking available for a particular field of law. Often a portion of CLE credits can be obtained by reading and doing other self-learning activities. In recent years, many jurisdictions have allowed lawyers to receive CLE credits by taking online or audio distance learning courses.

Alternatively, experienced lawyers in some jurisdictions, such as New York, may also gain CLE credits through public speaking or teaching within the accredited CLE programs; organization or participation in panel presentations in accredited CLE events; teaching law at law schools accredited by the American Bar Association; preparing students for competitions in jurisprudence and judging these competitions; conducting moot courts, including at the secondary school or college level; publication of legal studies; and providing free legal services.

State bar associations and national bar associations, such as the American Bar Association and the Federal Bar Association, offer opportunities for professional development throughout a year. Training is also organized at the premises of law schools, associations and groups such as the Practical Law Institute (PLI), the American Law Institute Continuing Legal Education (ALI-CLE), the Center for American and International Law (CAIL) and the Institute of American and Talmudic Law (IAT Law), as well as private and commercial organizations. Courses are generally open to all lawyers (and sometimes not lawyers), but organizations often offer discounts to their own members. It has become a customary lately to provide and promote free CLE programs.

In the **UK**, lawyers' activities are governed by the Legal Services Act 2007. The Continuous Professional Development program (CPD) is mandatory for all professions, including lawyers. Practicing lawyers should report annually on their professional development to the Solicitors Regulatory Authority (SRA), which provides tools to ensure compliance with these requirements. Practicing lawyers have to complete at least 12 hours of coursework and 50 hours of self-learning each year.

Since November 1, 2016, the Solicitors Regulatory Authority has introduced a new compulsory Continuing Competence program for practicing lawyers in England and Wales and registered European lawyers. Now lawyers do not need to count the hours of their training, but can pay more attention to the quality and purposefulness of the acquired knowledge in order to be competent in their field of law. The new approach allows lawyers to choose their own way of learning and decide what kind of knowledge they need in order to improve their skills. The SRA website⁵⁴ has detailed instructions and tools for self-learning, verification and assessment of knowledge. A lawyer can save his/her results and officially declare in writing that the training course has been completed. Then the SRA can ask for the course results to check competence of the lawyer.

In **Australia** and **Canada**, the rules vary depending on jurisdiction (i.e. provinces and territories). For example, in Alberta (Canada) there is a compulsory Continuous Professional Development Program (CPD), which requires development of annual training plans. Lawyers develop their training plans and report to the Law Society of Alberta about their fulfilment. The Law Society of Alberta provides tools to ensure compliance with these requirements.

The Law Society of Upper Canada, founded in 2010 in Ontario, has designated mandatory CPD hours for all lawyers in the province.

In British Columbia (Canada), the CPD is mandatory, and lawyers have to report annually on their professional development to the Law Society of British Columbia. The Continuing Legal Education Society of British Columbia provides tools to ensure compliance with these requirements. Practicing lawyers have to complete at least 12 hours of coursework and 50 hours of self-learning each year.

Continuing legal education is required of members of the Integrated Bar of the Philippines (IBP) to ensure that throughout their career, they keep abreast with law and

⁵⁴ <http://www.sra.org.uk/sra/sra.page>

jurisprudence, maintain the ethics of the profession and enhance the legal practice standards (Rule 1, Bar Matter No. 850 - Supreme Court of the Philippines).

The **German** Federal Bar together with the Federal Bar Association is responsible for professional development of German lawyers.

Provision of “Pro Bono” Legal Aid

The term “*pro bono*” comes from the Latin phrase “pro bono publico”, which means “for the public good”. In a legal context, this usually means delivery of legal services at no fee or substantially reduced fee without the aim of gaining commercial profit.

A survey, conducted by media company Thomson Reuter in 2016 among law firms in 75 countries, showed that the main purpose of their participation in pro bono activities was social support (95.5%). At the same time, 58.8% of companies mentioned education and professional development of their personnel as another key factor of their participation.

The most common area of pro bono assistance is access to justice (68%). The main beneficiaries of pro bono services are charitable and non-profit organizations (89%), public organizations (74%), and low-income persons (73%).

In the foreign doctrine, there are two concepts of “pro bono publico”: pro deo and pro bono. The main difference between the two concepts is that, in the case of pro deo, the state partially or fully assumes legal costs (state subsidized legal aid), while in the case of pro bono, legal aid is provided free of charge by lawyers or law firms.

The Australian Pro Bono Centre gives the following definition of “pro bono” services:

1. Giving **legal assistance for free or at a substantially reduced fee** to:-
 - a. individuals who can demonstrate a need for legal assistance but cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial hardship; or
 - b. individuals or organisations whose matter raises an issue of public interest which would not otherwise be pursued; or
 - c. charities or other non-profit organisations which work on behalf of low income or disadvantaged members of the community or for the public good;
2. Conducting **law reform and policy work** on issues affecting low income or disadvantaged members of the community, or on issues of public interest;
3. Participating in the provision of **free community legal education** on issues affecting low income or disadvantaged members of the community or on issues of public interest; or
4. Providing a **lawyer on secondment** at a community organization (including a community legal organization) or at a referral service provider such as a Public Interest Law Clearing House.

The following is not regarded as pro bono work for the purposes of this statement:

1. Giving legal assistance to any person for free or at a reduced fee without reference to whether he/she can afford to pay for that legal assistance or whether his/her case raises an issue of public interest;
2. Free first consultations with clients who are otherwise billed at a firm’s normal rates;
3. Legal assistance provided under a grant of legal assistance from Legal Aid;
4. Contingency fee arrangements or other speculative work which is undertaken with a commercial expectation of a fee;

5. The sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities; or

6. Time spent by lawyers sitting on the board of a community organization (including a community legal organization) or a charity.

Lawyers in *the Netherlands* are entitled to provide free legal services (that is, pro bono legal services). Lawyers do not have to charge a VAT imposed on their services, and there are no competition rules making lawyers charge minimum fees. In the Netherlands, beneficiaries of pro bono legal services are mainly organizations, while beneficiaries of pro deo services are individuals. Pro bono services are mostly provided by large law firms.

Portuguese law firms usually have free legal aid programs for charitable organizations working in the social, cultural or educational spheres. Law firms often have pages on their websites devoted to pro bono programs and publish contact information of lawyers participating in such programs.

There is a different situation in *Norway*, where the main providers of pro bono legal services are private practitioners. In order to facilitate access to lawyers, the National Bar Association provides a small amount of pro bono services through local bar associations: depending on location, lawyers deliver pro bono services from 30 minutes per month to 30 minutes per week.

The *French* legal lexicon does not use the American term *pro bono*. In France, they use the terms assistance “juridique gratuite” - free legal aid and “assistance benevolente” - benevolent assistance. The French legal aid model differs from the generally accepted pro bono model, where legal services are free for both parties. In the French model, there is a small payment for lawyers from the state⁵⁵.

In the *Italian* law practice, there was no concept of pro bono legal aid, but development of representative offices of international corporations has made adjustments to the Italian law by introducing the system of state-funded legal aid, called “patrocinio a spese dello stato” - meaning “representation through the state”. Under this new system, the Italian state bears the cost of in-court legal representation of indigents in civil, administrative and criminal cases, subject to certain eligibility criteria⁵⁶.

The term “legal aid” is more prevalent in *Israeli* legal discourse than the term “pro bono.” Lawyers usually refer to one of three categories of no-fee or reduced-fee services as falling under the concept of legal aid: 1) state-sponsored legal aid; 2) legal aid provided by non-profit organizations and NGOs; 3) legal services provided by private-sector attorneys⁵⁷.

⁵⁵“Pro Bono Practices and Opportunities in France”. Excerpt from: a survey of pro bono practices and opportunities in selected jurisdictions. Latham & Watkins LLP for the Pro Bono Institute. September, 2010. URL: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKewiSuejC1qHVhUoMZoKHUU7D-0QFggpMAA&url=https%3A%2F%2Fwww.lw.com%2Fadmin%2Fupload%2FDocuments%2FGlobal%2520Pro%2520Bono%2520Survey%2Fpro-bono-in-france.pdf&usg=AFQjCNEifxWTBfy0G2MDBE-8JeXrKX6uBQ&cad=rja>

⁵⁶“Pro Bono Practices and Opportunities in Italy”. Excerpt from: a survey of probono practices and opportunities in selected jurisdictions. Latham & Watkins LLP for the Pro Bono Institute. September, 2010. URL: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKewinvPyf2aHVhUoMZoKHUU7D-0QFggpMAA&url=http%3A%2F%2Fwww.lw.com%2Fadmin%2Fupload%2FDocuments%2FGlobal%2520Pro%2520Bono%2520Survey%2Fpro-bono-in-italy.pdf&usg=AFQjCNGfPkm9BY_bYMcAHctYzUc6euzNpw&cad=rja

⁵⁷“Pro Bono Practices and Opportunities in Israel”. Excerpt from: a survey of pro bono practices and opportunities in selected jurisdictions. Latham & Watkins LLP for the Pro Bono Institute. September, 2010. URL: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKewiOvfCo46HVhUoMZoKHdvgBqUQFggwMAE&url=http%3A%2F%2Fwww.probonoinst.org%2Fwpps%2Fwp-content%2Fuploads%2Fisrael.pdf&usg=AFQjCNFXf9TS4aQR2wDOPCT7bkKg9DvpJg>

The Constitution of the ***Republic of Armenia*** states that everyone has the right to legal aid, which should be provided free of charge when prescribed by law. The National Law of the Republic of Armenia “On the Bar” establishes the concept of “free legal aid”, which sets forth and regulates the rules for obtaining such aid.

Rule 6.1. of the ABA Model Rules of Professional Conduct reads that every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or
(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

It should be noted that every lawyer, regardless of professional reputation or workload, is responsible for providing legal services to those who cannot pay. The American Bar Association calls on all lawyers to allocate 50 free hours per year for such services. However, the states can decide independently on the number of free hours dedicated to pro bono legal services (which can be expressed as a percentage of lawyer's professional time), depending on local needs and conditions.

Thus, according to Virginia Rules of Professional Conduct, a lawyer should render at least two percent per year of the lawyer's professional time to pro bono publico legal services. Pro bono publico services include poverty law, civil rights law, public interest law, and volunteer activities designed to increase the availability of pro bono legal services (Rule 6.1.)⁵⁸.

Professional Liability Insurance

In the ***United States***, each of the 52 states has its own insurance system, but in most cases individual insurance model prevails. The state of Oregon uses a collective insurance system.

In the United States, professional liability insurance of lawyers is voluntary. In some states, bar associations create their own insurance companies, effectively competing with commercial insurance companies, which influences the insurance rates.

⁵⁸Virginia rules of professional conduct <http://www.vsb.org/docs/2009-10-pg-rpc.pdf>

Insurance organizations are often established on membership fees of lawyers and special reserve funds intended for paying compensation to customers affected by unfair legal practices⁵⁹.

In recent years, an increasing number of states (Alaska, South Dakota) have enshrined in their codes of conduct the rule that obliges a lawyer to disclose his/her insurance status to a potential client. The meaning of the rule is obvious: the client's awareness that lawyer's liability for potential harm from his/her erroneous actions is not insured, is an important factor in choosing a lawyer and entrusting him/her with an "expensive case"⁶⁰.

It should be noted with regard to lawyers, that the liability insurance systems in foreign states enable individual or collective insurance of lawyers in private insurance companies, as well as mandatory or voluntary insurance.

In **Germany**, liability insurance for lawyers is used in limited cases, for example, when lawyers are late with filing appeals and cassation complaints, make technical mistakes, etc., their clients have the right to claim compensation of damages from insurance companies.

Under German law, lawyers are liable for harm they cause by negligence to others, above all to their clients, while performing their professional duties. Moreover, a lawyer bears unlimited liability, including his/her personal property.

Thus, the system of professional liability insurance for German lawyers provides for individual insurance of lawyers in private insurance organizations.

French law "On the Organization of Legal Profession" of 1991 envisages mandatory professional liability insurance for lawyers (Articles 205, 206). An insurance contract can be concluded by an individual lawyer, a group of lawyers or a law firm. The law also provides for a second type of insurance - the risk of loss by a lawyer of valuables, property and documents belonging (or due) to the client and obtained by the lawyer in connection with performance of his/her professional duties (Articles 207, 208).

With regard to this second type of insurance, the Law establishes the procedure for obtaining the insurance indemnity by the client. It is paid if the lawyer is insolvent, as evidenced by his/her failure to comply with the client's demand for return of valuables or compensation for damages within a month from the date of notification.

Legal Practice

In **the UK**, legal practice is regulated by Courts and Legal Services Act of 1990, Legal Services Act of 2007, and Solicitors Act of 1974.

A lawyer with regard to judicial procedures is a person who has the right to participate in the proceedings as a representative of a party (meaning with the direct participation of the party) or instead of any of the parties.

Legal activities (legal services) are services provided by a person who has the right to appear in court or is about to receive such a right. At the same time, an authorized lawyer is a person, including a barrister or a solicitor, who is entitled to appear in court by the authorized body, or who is member of such a body.

Under Article 1 of Solicitors Act 1974, a solicitor in England and Wales is a person admitted as solicitor, included in the register and having a special certificate authorizing him/her to act as solicitor.

⁵⁹R. Strang, Professional Liability Insurance of Lawyers in the United States // Irkutsk Bar Association Bulletin No 10, 2006.

⁶⁰M. V. Kretnko, Professional Liability Insurance of a Lawyer// Law and Economy 2004, No 10, p. 83

To become a solicitor, a person needs to have a legal education, pass a year of internship and a corresponding exam. However, to practice independently, a solicitor needs to work for 2 years in a law firm to gain practical experience. Persons without a basic legal education can take a training course in legal specialties, and then gain solicitor's qualification according to the above scheme.

To become a barrister, one needs to have a legal education, attend Bar Vocational Course at one of the Inns of Court Schools.

Barristers are lawyers who have the right to speak in courts of all instances and whose work is supervised by the General Council of the Bar. Also, all barristers must be members of one of the four associations (Inns of Court).

All the rules of professional conduct of a lawyer are described in Solicitor's Code of Conduct (the version of 2007 consisted of 200 pages, while the previous one – of 700 pages). There is also a more general wording - a lawyer should not do anything that could undermine the reputation of legal profession in society.

In the United States, there is no normative legal act establishing the legal status of the lawyer in legal proceedings. The status of defender stems from the custom, case law, and norms of professional ethics.

The fundamental condition for lawyer's participation in legal proceedings is set forth in Amendment VI (1791) to the US Constitution: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence".

Lawyers have the right to work independently or join efforts with several colleagues. The main form of legal activity in the United States are big law firms, consisting of more than fifty lawyers. Such firms, as a rule, do not deal with criminal cases and mainly conduct businesses of corporations. Such firms are owned by partners. A partner is a lawyer with an extensive practice, who has a high income and the right to a portion of the law firm's profits. The second group of lawyers are associates, who have little or no clients and receive salaries from the firm.

Each state has a bar association. In most states, membership in the associations is mandatory for all persons admitted to practice law. However, in a number of states it is not necessary for a lawyer to be a member of a bar association. In such states, associations of lawyers are created as voluntary organizations.

The American Bar Association is a national lawyers' organization with voluntary membership.

Bar associations are purely professional unions not engaged in any legal practice.

Not only practicing attorneys, but also lawyers working in prosecutor's offices and legal advisers can be members of bar associations.

In view of the federal arrangement, each state has an independent judicial system and establishes its own requirements for lawyers. The most common requirements are as follows:

- 1) PhD in Law in a university accredited with the American Bar Association;
- 2) successful passing the Multistate Professional Responsibility Examination (MPRE) in all the states except for Maryland, Puerto Rico and Wisconsin. The examination involves questions related to professional responsibility of lawyers;
- 3) successful passing of the bar examination, as a rule organized by the state bar association in cooperation with the supreme court of the state.

Since July 2015, 16 jurisdictions have introduced the Uniform Bar Examination (UBE), which consists of 3 parts:

- Multistate Bar Examination (MBE) consisting of 200 questions covering 7 branches of law;

- Multistate Essay Examination (MEE) covering different branches of law;

- Multistate Performance Test (MPT) in which every candidate fulfills a professional task. Each candidate receives a case for analysis, necessary sources (laws, precedents) and other relevant sources.

4) receive from the state bar association a certificate of good moral character and a certificate of eligibility to practice law;

5) apply to the state licensing authority (state agency) and pay the required fee. Upon receiving the approval and the license, a lawyer swears to abide by the rules regulating legal profession in the state.

As of 2003 (there is no up-to-date information in the available sources) there were 1,058,662 lawyers admitted to practice in the United States, i.e. one lawyer per 265 people. It should be noted that this figure is influenced by the fact that all legal professionals, from judges to “office lawyers” or “litigators”, are members of the bar, have a legal education and receive the same license to practice law.

In Germany, legal practice is regulated by the Federal Lawyers’ Act of 1959.

Legal practice is characterized by:

- non-commercial nature of activities of bar associations and chambers;

- mandatory membership of lawyers in the bar association of the state. Mandatory membership of bar associations of states in the German Federal Bar.

Lawyers carry out their activities either collectively or individually. Collective forms of activities are corporations of public law.

A lawyer opens an office at the particular court of the state or the superior court of the state, where he is admitted to practice law. A lawyer can obtain a work permit in other courts, but only in the interests of justice and only as an exception.

Bar associations are formed on a territorial basis, uniting lawyers assigned to a court of the same state within the same district.

All bar associations in Germany are united in the single Federal Bar, which includes 28 regional bar chambers. A special bar is formed by lawyers, who conduct cases in the Supreme Federal Court by decision of the Ministry of Justice upon passing a strict selection by a special commission.

The General Meeting and the Council of the Bar perform administrative functions. These bodies are entitled to participate in the legislative process by submitting proposals and recommendations to and holding consultations with the Parliament (Bundestag).

It should be noted that in Germany, justice bodies represented by the ministries (departments) of justice of states monitor activities of lawyers and their associations on behalf of the government. The final state examination in law schools is held with direct participation of representatives of the justice bodies. The Ministry of Justice develops the examination program, prepares examination tickets, publishes methodological manuals and forms an examination board. It monitors activities of bar associations. It is impossible to form a second bar association in the territory of a certain region (state) without the ministry’s consent.

In Germany, one does not have to pass a special examination to obtain the attorney’s status, but the process of receiving legal education is one of the most difficult. All those willing to practice law have to pass two state examinations.

The first examination is passed after graduation from a law department, while the second one – after completion of traineeship for filling a judicial office. The first exam covers all areas of specialization, while the second one includes questions on the core subjects.

Professional functions of lawyers in Germany are listed below:

1) giving legal advice and counseling (information);

2) representation of clients acting as parties in the civil process (in court and in extrajudicial bodies);

3) protection of the accused or defendants in criminal cases in courts and (or) investigating bodies; representation of interests of victims in criminal proceedings;

4) entry into an agreement with a client for management of his/her property;

5) performance of the legal adviser's functions in accordance with the concluded agreement (§ 43 BRAO, Federal Lawyers' Act).

The Federal Lawyers' Act highlights importance of ethical norms and rules: "A lawyer shall practice his/her profession conscientiously. A lawyer shall show that he/she is worthy of the respect and the trust that his/her status of a lawyer requires".

According to §45 BRAO, a lawyer may not practice:

- if actions that he/she is required to undertake are at conflict with his/her duties;
- if he/she has already provided legal advice on the same case or represented interests of the adversary;

- if he/she has already been concerned with the same legal issue as a judge, an arbitrator, a public prosecutor, a member of the public service;

- when it comes to interpretation of a document, drafted with his/her involvement as a notary or involvement of a lawyer, who is his/her partner in law practice.

Fees of attorneys are regulated in Germany by Law on the Remuneration of Attorneys (RVG Rechtsanwaltsvergütungsgesetz) with a reference paper (RVV Rechtsanwaltsvergütungsverzeichnis), which contains annexes with remuneration schedules depending on the sum of litigation or claim, time spent and presence in court, as well as on other situations set forth in the law, complexity of the situations and branch of law to which they are referred, typical and commonly occurring legal costs.

Disciplinary liability of lawyers is considered by the Court of Honor.

BRAO establishes the following types of liability of lawyers: a warning, a reprimand, a fine of up to 25,000 euros, a ban on legal practice for a period of one to five years, and exclusion from the bar.

In France, the legal status of lawyers is regulated by the Law "On the Reform of Certain Judicial and Legal Professions" of 1971 and 1990 and the Decree "On the Organization of Legal Profession" of 1991.

In the past 20 years, the Bar of France has undergone significant changes. Under the Act of December 31, 1971, a number of legal professions (attorney, solicitor and expert adviser in commercial courts) merged into a single profession of lawyer. In 1992, professions of attorney and legal adviser merged into a new single profession of lawyer.

In France, the term "lawyer" means not a rank, but a type of professional activity of a practitioner. Therefore, a person who has the lawyer's qualification, but has quit the legal practice, can no longer be called a lawyer even if he/she continues to work in other areas of law.

Currently, there are three categories of lawyers entitled to appear in court. These are solicitors, barristers and barristers before the council.

Solicitors have the right to represent interests in the courts of first instance.

- Barristers - in the appeal courts.

- Barristers before the council - in the courts of cassation and the state council.

Lawyers have the right to work independently or form partnerships with their colleagues.

The association is a union of lawyers, each of whom is personally responsible to his/her client. Association members have personal rights that cannot be delegated. Association members fully retain their independence. An association agreement is brought to the attention of the Council of the Bar Association. Civil professional partnerships are subject to

registration as legal entities and are included in the register of bar associations. Partnership members bear solidary and full liability for its debts. The clients of each civil professional partnership, figuratively speaking, are transferred to the ownership or use of the partnership. A lawyer receives no fees, but a share of profits of the partnership in accordance with the share of the charter capital. Current and operational expenses are borne by the partnership.

In France, a lawyer can be employed by another lawyer.

The lawyers in France are united in associations (orders). In each judicial region, there is only one association. There are 181 regional courts and a corresponding number of bar associations. Each association is an independent, self-governed organization with its own internal regulations and property.

A bar association is headed by a chairman (le battonier), who is elected by secret ballot by association members (including trainees) for a term of two years. Chairman's competences include representation of association's interests in government bodies and public organizations, the resolution of disputes between lawyers, the application of disciplinary sanctions to bar members, and administration of bar services; the chairman is the chair of the council of the bar association.

The Council of the Bar Association (conseil de l'ordre) is elected by secret ballot by members of the bar association, including trainees, for a term of three years. The Council regulates different activities of the Bar Association.

At the national level, the Bar of France is represented by the Council of Bar Associations, which is elected by members of the association. The main functions of the Council are coordination of training centers for lawyers, representation of lawyers in governmental and non-governmental organizations. The Council of Bar Associations also has the right to develop disciplinary and ethical standards for the entire profession.

Article 11 of Act No 71-1130 of December 31, 1971 establishes qualification requirements for lawyers. In particular, a lawyer should:

- be a citizen of France, or a EU member-state, or a state-party to the Agreement on European Economic Area (EEA) (Art. 6 of Act No 931420 of December 31, 1993), or a citizen of a State or a territorial unit, which is not a member of the EU or a party to the EEA, but has granted French nationals the right to engage in professional activities on its territory on the same terms on which its citizens can engage in professional activities in France, taking into account decisions of the Council of the European Union on groups of states and overseas territories in the European Economic Union, or have the status of a refugee or a stateless person under protection of the French Office for the Protection of Refugees and Stateless Persons;

- have Master in Law degree or an equivalent degree;
- have the Certificate of Aptitude for the Legal Profession (le Certificat d'aptitude `a la profession d'avocat - CAPA);

- not to commit actions contrary to honor, decency or morality that give grounds for criminal prosecution;

- not to commit actions that give grounds for applying disciplinary or administrative sanctions in the form of dismissal, exclusion, recalling, revocation of registration or license;

- not to be subject to the bankruptcy procedure or other sanction provided for by Chapter VI of Act No. 8598 of January 25, 1985 pertaining to reorganization and liquidation of organizations by the court, or, according to the previous version of this law, the sanctions provided for by Chapter II of Act No. 6756 of July 13, 1967 on judicial procedure, liquidation of property, insolvency and bankruptcy.

A person who is not a member of a bar association is not entitled to practice law. A person, who meets the statutory requirements, should submit an application to the Council of the Bar Association, which makes a decision on admission to the bar. The Council may deny admission to bar association if the applicant has no office within the judicial district of the court of superior jurisdiction and fails to meet the moral, ethical and other requirements for lawyers.

In France, the Law “On the Organization of Legal Profession” of 1991 introduces compulsory insurance of professional liability of attorneys (Art. 205, 206).

An insurance contract can be concluded by a concrete lawyer, a group of lawyers or a law firm. The law also provides for the second type of insurance - risk of loss of valuables, property and documents belonging (or due) to the client and obtained by the lawyer in connection with his/her professional duties (Art 207, 208). With regard to this second type of insurance, the Law establishes the procedure for obtaining the insurance indemnity by the client. It is paid if the lawyer is insolvent, as evidenced by his/her failure to comply with the client's demand for the return of valuables or compensation for damages within a month from the date of notification.

Professional ethics and attorney-client privilege are the key pillars of the French Bar.

The rules of professional conduct are enshrined in the National Internal Regulations adopted by the National Council of the French Bar Association, as well as in internal regulations adopted by regional bar associations.

The rules of professional conduct of the lawyer are set forth in laws (including the oath of a lawyer in the Law “On the Reform of Certain Judicial Professions” of December 31, 1971, and Decree of November 27, 1991 “On Legal Profession”). Some norms related to the professional conduct of lawyers are also set in the Civil and Criminal Procedure Codes and established by government decisions.

Furthermore, the rules of conduct for lawyers are regulated at the European level by the non-binding Code of Conduct for Lawyers in the European Union, adopted in 1988.

Professional activity of lawyers should be guided by the current legislation, in particular, the Code of Professional Conduct of Lawyers, which contains a number of principles to be followed by lawyers. These are: independence from external pressure and personal interests contrary to lawyer's professional activities; lawyer-client privilege; confidentiality of verbal and written contacts between lawyers; the rule of conflict of interests that prohibits provision of legal aid or protection of two clients with potentially opposing interests.

A lawyer breaking the above principles can be brought to disciplinary responsibility by the corresponding bar association.

Since the law refers legal practice to independent professions, any interference in financial relations between the lawyer and the client is restricted. The lawyer-client relationship is based on a voluntary agreement. Article 10 of the Law “On the Status of Lawyers” states that fees for the preparation of civil procedural documents and participation in procedural actions shall be established by civil procedure legislation. Fees for consultations, assistance in court, counseling, drafting legal documents that do not require certification, and for participation in oral arguments shall be determined by agreement with the client.

In the absence of agreement with the latter, the fee is usually determined depending on client's well-being, complexity of the case, attorney's expenses, etc. It is forbidden to set the fee depending only on the case outcome, but it is not forbidden to pay extra apart from the fee if court decides in favor of the client.

Disputes between the attorney and the client regarding the fees are resolved by the bar association leadership.

Lawyers devote part of their working hours to providing free legal aid to the public.

Article 21 of the Law of **Georgia** “On Advocates” includes the following oath: “I swear to be loyal to the ideas of justice, carry out an advocate’s duties in good faith, and protect the Constitution and the laws of Georgia, the code of professional ethics of advocates, and the human rights and freedoms.”

If a person refuses to take the oath on ideological grounds, he/she should write a statement, undertaking to perform statutory duties of an attorney in good faith. Having taken the oath (signing the act) the person acquires the status of an attorney and receives a certificate confirming his/her right to practice law.

Article 11 of the Law of Ukraine “On the Bar and Practice of Law” includes the following oath: “I, (name and surname), hereby solemnly declare that in my practice of law, I will comply with the principles of the rule of law, legality, independence and confidentiality, professional conduct rules, I will honestly and faithfully support the right to defense and provide legal services in accordance with the Constitution of Ukraine and laws of Ukraine, and I will discharge my duties to the best of my knowledge and ability and will abide by the oath.”

Entry fees are not provided for in **Ukraine**, Moldova and the USA. The Law of Ukraine “On the Bar and Practice of Law” requires only annual contributions of lawyers to ensure bar self-government.

In the Republic of Belarus, the Law “On the Bar and Practice of Law” requires no entry fees, but only contributions for the maintenance of the territorial bar associations.

Self-Regulated Bar Association

Self-regulation of legal aid providers is a common international practice with different organizational forms.

The lawyers of **France** are united in associations (orders). There is only one association in each judicial region and **181** bar associations in France. The associations differ by their quantitative composition: the smallest of them has only 7 barristers, and the largest one comprises 11 thousand. Each association is an independent organization with its internal regulations and property. Each bar association is headed by a chairman, who is elected by secret ballot by association members (including trainees) for a term of two years. Chairman’s competences include representation of association’s interests in government bodies and public organizations, the resolution of disputes between lawyers, the application of disciplinary sanctions to bar members, and administration of bar services; the chairman is the chair of the council of the bar association.

At the national level, the Bar of France is represented by the Council of Bar Associations, which is elected by members of the association. The main functions of the Council are coordination of training centers for lawyers, representation of lawyers in governmental and non-governmental organizations. The Council of Bar Associations also has the right to develop disciplinary and ethical standards for the entire profession.

Lawyers have the right to work independently or to unite under conditions of partnership with other lawyers.

The **German** Bar consists of bar associations that are formed on a territorial basis. If the number of practicing lawyers in a bar exceeds 500 people, a second bar may be formed in the same district upon agreement with the Ministry of Justice.

Lawyers are to pay a certain percentage of their fee to a special social security fund, which is spent on the needs of lawyers and members of their families.

In Germany, almost all the issues of the Bar are regulated by law.

German lawyers are responsible for the harm caused to the interests of the client by their unethical or unprofessional behavior.

There are two kinds of bar associations in the *United States*.

Associations with mandatory membership (mandatory, unified, or integrated bar).

Thirty two states and the District of Columbia require membership in a bar association of the state to practice law. For example, the State Bar of Texas is under the administrative control of the Supreme Court of Texas and consists of individuals licensed to practice law in the state. The Texas Bar Association has its own membership rules. Another example is the California Bar Association.

Voluntary and private bar associations are private organizations of lawyers. Each of them can have social or educational function, but cannot regulate legal practice aspects or the right of lawyers to engage in legal practice.

Voluntary membership associations function in each of the 18 states, where there are no bar associations with mandatory membership. These associations are based on either geographical principle (Chicago Bar Association), interest to a particular branch of law, or ethnical principle (Hispanic National Bar Association).

The **American Bar Association** (hereinafter - ABA) is the largest association with voluntary membership in the United States.

About 35 specialized professional lawyer organizations (for example, the Judges Association, the National Association of Attorneys General, the National Association of Criminal Defense Lawyers, the National Association of Women Lawyers) take part in the activity of the ABA on the rights of collective members.

The ABA is open to **all individuals** through various categories of membership, including licensed lawyers, foreign lawyers and attorneys who have not received a license in the US, law students (students in law school accredited by the ABA), non-lawyers interested in this field (economists, librarians in legal literature departments).

The ABA has adopted nonbinding Rules of Professional Conduct, which were endorsed in all states except for California. ABA membership is chargeable; the size of the membership fee depends on the length of service.

The **Swedish** Bar Association is governed by the provisions of the Code of Judicial Procedure and its own Charter, approved by the Government. Only members of the association can be called lawyers. The association is a private law entity, targeting to maintain high ethical and professional standards in the legal profession, protect the common professional interests of its members and preserve unity and consensus among them.

The **Netherlands** Bar Association (Nederlandse orde van advocaten, NOVA) is a professional organization of lawyers, established by the Act on Advocates (Advocatenwet) of October 1, 1952. All expenses incurred by NOVA are paid by attorneys through an annual membership fee.

The Netherlands is divided into eleven judicial districts (regions), according to the jurisdiction of courts. Lawyers in a judicial district form a local bar association, headed by the council and the chairman. The local bar is responsible for monitoring activities of all lawyers in the respective judicial district.

11. Estimated Financial Costs Related to the Draft Law

Adoption of this Draft Law will not require any expenses from the republican budget or local budgets.