

## LATEST AMENDMENTS TO CODE ON SUBSOIL AND SUBSOIL USE

### IMPORTANT!

Over the past year, Kazakhstan adopted 7 laws amending the Kazakhstan [Code](#) on Subsoil and Subsoil Use (hereinafter, the "**Code**"). Part of the novelties will enter into force starting from 1 July 2021, for example, with respect to additional competence of the authorized agency in the sphere of solid minerals (from now on, the authorized agency's competence will contain a possibility to draft and approve technical regulations) and requirements on preparation of the liquidation plan for the production of solid minerals (it is established that the liquidation plan must be prepared with the participation of a person holding a license to perform work and provide services in the environmental protection sphere, and must be approved by a subsoil user).

The amendments mostly tighten the requirements to subsoil users and clarify the procedure for obtaining the subsoil use right. Over the past year, 9 new paragraphs and 3 new articles were added to the Code. At the same time, 6 paragraphs were deleted from the Code.

Please see below a brief analysis of the amendments adopted over the period from 25 June 2020, which we deem most important for business activities of companies.

### ■ **Amendments in the Procedure for Transferring the Subsoil Use Right and Re-Issuing a License**

According to amendments, in order to re-issue a subsoil use license or introduce changes into a subsoil use contract the *holder* of the subsoil use right (share in the subsoil use right) and acquirer of the subsoil use right (share in the subsoil use right) must *file a joint application* to the governmental agency that issued the subsoil use license or entered into the subsoil use contract.

At the same time, Kazakhstan added new additional documents to be attached to an application. From now on, it is necessary to file the following documents in addition to an application for re-issuing a license or introducing changes into a contract:

- written consent of a pledge holder in case the subsoil use right (share in the subsoil use right) is pledged;
- in case of joint possession of the subsoil use right – written consent of all joint possessors of the subsoil use right.

### ■ **Amendments Affecting the Liquidation of Consequences**

New paragraphs were added to Articles 54, 55, 57 and 58 of the Code:

- Article 54 of the Code now contains paragraph 6, which establishes that the procedure for accepting the examination results and work on liquidation of consequences of subsoil use operations must be determined by a competent authority together with an authorized agency in the environmental protection sphere.

- Paragraphs 8 and 9 were added to Article 55 of the Code. Paragraph 8 is not so important and establishes that the security for the performance of obligations must meet the legislation requirements. In turn, according to the new paragraph 9 of this Article, the procedure for provision and registration of securities for the performance of obligations on liquidation of the subsoil use operations accepted by the governmental agency must be determined by the competent authority.
- Paragraph 7 was added to Article 57 of the Code, which establishes clarifying provisions on the bank deposit pledge agreement. According to the new paragraph, a bank deposit pledge agreement as a method to secure the performance of obligations on liquidation of consequences of subsoil use operations must be entered into in the Kazakh and Russian languages in accordance with the model form. The procedure for entering into a bank deposit pledge agreement and its model form must be approved by a competent authority.
- New provisions on insurance agreement were added to Article 58 of the Code. Specifically, it was determined that the object of insurance is the property interest of a subsoil user associated with the performance of the subsoil user's obligations on liquidation of consequences of the subsoil use operations in accordance with the procedure and within the timeframes established by the Code. Model form of an insurance agreement for the purposes of securing the performance of obligations on liquidation of consequences of subsoil use operations is established by the [Order No. 148](#) of the Minister of Industry and Infrastructural Development of Kazakhstan of 31 March 2021.

### ■ Amendments Affecting the Uranium Production

Paragraphs 4-1, 5-1, 5-2 and 5-3 were added to Article 173 of the Code:

- Paragraph 4-1. In case the uranium deposit reserves increment exceeds the initial reserves by 30% or more, according to the geological reserves estimate report, provisions of the uranium production contract with respect to such deposit must contain additional obligations of a subsoil user on implementation of a project focused on social and economic development of the region.
- Paragraph 5-1. Following the results of reviewing an application the competent authority makes one of the following decisions:
  - on extension of the period of production, except for the situation stipulated by paragraph 4-1 of this Article;
  - in a situation stipulated by paragraph 4-1 of this Article, on negotiations with a subsoil user within the timeframes and according to the procedure stipulated by this Article;
  - on refusal to extend the period of production.
- Paragraphs 5-2 and 5-3 establish the provisions with respect to negotiations with a subsoil user on determination of the obligations performance conditions and procedure.
- Article 176 now contains paragraph 7, which establishes that during the period of

uranium production it is allowed to conduct additional examination (exploration) of the production site in order to clarify the geological structure and uranium reserves.

The amendments also affected the monitoring over the performance of design documents. Specifically, the law-maker excluded the paragraphs on field (author) supervision with respect to uranium production. Starting from 9 March 2021, monitoring over the implementation by subsoil user of experimental-industrial production and deposit development projects must be exercised only by way of analysis of uranium deposit development conducted at least once every 3 years.

### ■ Regulation of the Procedure for Liquidation of Mining Consequences

Starting from 1 March 2021, Kazakhstan put into effect Article 273–1 of the Code, which regulates in more details the procedure for liquidation of mining consequences.

It was established that the consequences must be liquidated by way of mined-land reclamation. Liquidation of consequences must be accomplished not later than 6 months after the expiration of a mining license; however, in case no liquidation was possible or it was significantly hindered due to weather and/or natural and climatic conditions, pursuant to an application from a person whose subsoil use right has been terminated, the term for liquidation may be extended for a period of up to 4 months of the date of expiration.

At the same time, liquidation operations are not required in a situation where no mining operations were conducted by a subsoil user on the mining site (any part thereof) waived by the subsoil user.

Liquidation of consequences of operations at a mining site (any part thereof) is deemed to have been accomplished after signing the liquidation act, which is signed by the commission established by a respective local executive authority of Oblast from its representatives and representatives of the authorized agency in the environmental protection sphere and a subsoil user (person whose subsoil use right (if any) has been terminated). In case liquidation takes place on a land plot, which is held under the private ownership right, permanent or long-term fee-paid land use right, the liquidation act must also be signed by the land plot owner or the land user.

### ■ Other Important Changes

There are changes concerning liability for violating the Kazakhstan subsoil legislation. Specifically, from now on, Article 79.3 of the Code establishes that persons causing damages to subsoil resources as a result of **violating the state's property right to subsoil** must compensate for the damages caused. Before the amendments, this Article provided only for liability for violating the subsoil legislation.

This Article also establishes that the methodology for economic assessment of damages to subsoil resources must be approved by the authorized agency in the sphere of solid minerals together with the authorized agencies in the sphere of hydrocarbons and uranium production. As of 31 May 2021, this methodology was not adopted despite the fact that the Ordinance No. 67-p of the Kazakhstan Prime Minister of 27 March 2021 established that the methodology had to be developed in May 2021.

Another important amendment is the addition of a new ground for refusal to issue a license for exploration of solid minerals. Thus, the following ground was added to Article 190 of the Code:

- applicant's failure to comply with the term for provision of proper security to the competent authority of the performance of obligations on liquidation of consequences of operations involving solid minerals exploration in accordance with requirements of this Code.

The provision securing the subsoil user's obligation to submit the quarterly reports to the competent authority on implementation of the operations program as a condition for the status of retaining a subsoil block under a license for solid minerals production was excluded. The report on implementation of the operations program is now referred to periodic reports, which must be submitted on the annual basis for the previous calendar year not later than the 30 April of each year.

The last important amendment is the fact of securing designated use of the extracted mined rock and soil. Starting from 1 March 2021, the extracted mined rock and soil may be used only for the purpose of erection and operation of structures, installations and other facilities ensuring the use of subsoil space.

Please note that this Update lists only the most important amendments. Should you have any additional questions in connection with this Legal Update, we would be happy to provide more detailed information.

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