



In line with GRATA Law Firm's practice of keeping clients informed of important legal developments that might influence their business, we would like to draw your attention to the changes related to the enactment of the new Law "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Relating to Environmental Issues", aimed at engagement of Kazakh companies in the reduction of greenhouse gas emissions.

1. OVERVIEW

Kazakhstan is taking steps to share a worldwide efforts to counter global warming and, at the same time, to pursue a number of economic objectives by participation in the Kyoto Protocol's flexible mechanisms. Our country is of the view that the fight against global warming should not demand from investors disproportionate costs, however, can be used as an effective mechanism to raise investments, in particular, in infrastructure improvements in the subsoil use and other priority economic sectors.

In this regard, on 3 December 2011, the Law on Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Relating to Environmental Issues was adopted in Kazakhstan (hereinafter - the '**Law**'). Being aimed at the implementation of the Kyoto Protocol in Kazakhstan, the Law affected the interests of entities operating in the area of subsoil use, metallurgy, chemical industry, agriculture and transport.

The Law amended various Kazakh Laws, including the Environmental Code, the Tax Code, the Budget Code, the Code on Administrative Offences, the Criminal Code, the Law on Bankruptcy and many others.

Some of the most important changes introduced by the Law are summarised below. Most of the amendments will enter into force starting from 1 January 2013.

2. KYOTO FLEXIBLE MECHANISMS – SUMMARY

On 26 March 2009, Kazakhstan ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change (hereinafter - the '**Protocol**'), with effect from 17 September 2009, taking a significant step to participate in the Protocol-based market mechanisms, including emissions trading and incentives for foreign investment in projects that reduce emissions in Kazakhstan.

The Protocol provides for three so-called 'flexible mechanisms' designed to encourage economic measures to reduce emissions of greenhouse gases (hereinafter - '**GHG**'). Kazakhstan is planning to participate in two of these mechanisms:

- Joint Implementation (JI) – a mechanism which enables investor from a developed country to carry out project that will reduce GHG emissions in another country. Such projects may include modernization of infrastructure, utilization of associated gas etc. The resulted emission reductions are credited to the investors;

- Emissions trading – arrangement for trading GHG emissions allowances between entities of one country, entities from different countries and, finally, between countries. Under the general concept of emissions trading, an authority establishes an allowable overall level of GHG emissions into the environment and allocates such allowances among entities in the form of permits. Entities are required to limit their total emissions to the level set in such permits. Entities that need to increase their emissions can buy allowances from those who keep their emissions level below the allocated level and, as a result, have a surplus of allowed emissions.

3. CATEGORIES OF EMITTERS

3.1. General Provisions

According to the amendments made by the Law to the *Environmental Code of the Republic of Kazakhstan*, dated 9 January 2007 (hereinafter - the '**Environmental Code**') all GHG emitters will be divided into two categories, depending of the annual level of their emissions:

- (i) entities with overall annual emissions exceeding 20,000 tons of CO₂ (hereinafter - the '**Major Emitters**');
- (ii) entities with overall annual emissions not exceeding 20,000 tons of CO₂. Such entities are called in the Environmental Code the “subjects of administrative regulation” (hereinafter - the '**SARs**').

3.2. Major Emitters

Article 94-2.1 of the Environmental Code (*GHG emissions allowances*), prohibits activities of the Major Emitters in the areas of industry, oil and gas, energy, mining and metallurgy, the chemical industry, agriculture and transport without obtaining allowances for GHG Emissions from the Ministry of Environmental Protection (hereinafter - the '**Ministry**').

This prohibition is effective from 1 January 2013.

Allowances will be allocated by the Ministry between the Major Emitters based on the National Allowances Allocation Plan. The National Plan will be developed by the Ministry and approved by the Government no later than 1 December of the year preceding the period of its validity.

Allowances will be indicated in a certificate issued by the Ministry. Major Emitters that need to increase their emissions can buy allowances from those who keep their emissions level below the level allocated in their certificates.

3.3. SARs

SARs are legal entities that perform activities related to the GHG emissions in the volumes not exceeding the equivalent of 20,000 tons of CO₂ per year in the following sectors: oil and gas, energy, mining, chemistry, agriculture, transport, as well as housing.

The SARs are not allocated GHG Emissions allowances and are not able to participate in the emissions trading system, however, GHG Emissions volumes made by the SARs are controlled by the Ministry.

4. EMISSIONS ALLOCATION AND TRADING

4.1. GHG Emissions Allocation to the Major Emitters

In order to provide flexibility of the state regulation of GHG emissions, such emissions are not subject to the following permit procedures in the area of environmental protection:

- (i) Environmental Impact Assessment;

- (ii) State Environmental Expert Examination;
- (iii) Environmental Permits (however, GHG emissions mentioned in the Tax Code as a contaminants do not require permits);
- (iv) Environmental Audit.

The GHG emissions by Major Emitters shall be made on the basis of certificates that include allowances issued by the Ministry. The procedure for issuing certificates is fixed in *the Rules of Issuing Allowances for Greenhouse Gas Emissions*, approved by the Resolution of the Government No. 584, dated 7 May 2012 (hereinafter - the '**Rules**'). Under the Rules, obtaining certificates requires the application from a unit operator, the report on the GHG inventory for the reporting year, unit passport, program to reduce GHG emissions, action plan for the implementation of projects to reduce GHG emissions. The certificate must be issued within one month from the date of the receipt of all required documents by the Ministry.

4.2. Emissions Trading

To increase their allowed emissions level, the Major Emitters will have a chance to participate in the emissions trading system. Domestic GHG emissions allowances allocated by the Ministry will be traded through special exchanges.

Participants in the emissions trading will be Major Emitters, legal persons received carbon units (i.e., parts of allowances) as a result of participation in domestic projects to reduce GHG emissions (i.e., projects implemented in Kazakhstan for units owned by others entities), as well as professional participants of the stock market.

5. OTHER SIGNIFICANT CHANGES

According to the amendments to the *Law on Bankruptcy* dated 21 January 1997, GHG emissions allowances are not included in a bankrupt's assets in bankruptcy proceedings.

According to the amendments to the *Administrative Code* dated 30 January 2001, GHG emissions above the allowance defined in certificate issued by the Ministry will result in administrative liability in the form of a penalty equal to 10 MCI (approximately US\$ 108) for each ton of extra GHG Emissions.

6. CONCLUSION

Analysis of the changes aimed to control GHG emissions, has shown that they affect the interests of the majority of Kazakh subsoil users, as well as many companies in the areas of energy, chemical industry, metallurgy, agriculture, and transport.

The changes include a number of permit procedures, which at first glance may seem burdensome for companies operating in the above areas. However, it should be noted that these changes are, in fact, create a new market in Kazakhstan - trading market for GHG emissions, and in addition, may result in a number of additional investment opportunities for Kazakh companies.

We will continue to monitor the legislation on GHG emissions and application thereof.

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