Review of Legal Developments to the Law of the Republic of Kazakhstan ‘On Subsoil and Subsoil Use’ Made on 29 December 2014
The Law of the Republic of Kazakhstan No. 271-V ‘On the Introduction of Amendments to Some Legislative Acts of the Republic of Kazakhstan on Subsoil Use Issues’ was signed on 29 December 2014 (‘Amendments’), which came into force on 10 January 2015. The said law introduced a range of significant changes to a number of legislative acts, including the Law of the Republic of Kazakhstan No. 291-IV, dated 24 June 2010 ‘On Subsoil and Subsoil Use’ (hereinafter – the ‘Law’ or ‘Subsoil Law’).

Below you can find a brief review of the main amendments made by the said law.

1. Procedure for Obtaining Subsoil Use Rights

The Subsoil Law originally provided for the method of granting rights such as 'competition'. Under such a method, the criteria of granting rights were declared and based on proposals by the size of the subscription bonus and contributions to social development the winner was determined, who was entitled to obtain subsoil use rights.

According to the Amendments, the competition for subsoil use rights may be held in two forms:

1.1. Tender

Pursuant to the Amendments, the 'competition' previously provided by the Law for obtaining subsoil use rights was converted into the tender. All of the terms and provisions of the Law that were previously applied for the competition now refer to the tender. In other words, the tender is a renamed competition.

1.2. Auction

The auction is a simplified procedure for determining the winner of the competition for the subsoil use right. A criterion for determining the winner is the highest subscription bonus.

Terms of the auction are announced by a separate committee and, basically, are similar to the tender terms, with the only exception that participants shall specify the local content amount in the contract, training costs, and the amount of contributions to social development of the region and its infrastructure.

2. Simplification of the Procedure for Obtaining the Exploration Right

The Amendments introduces the so-called 'simplified' procedure for granting the exploration right, which is as follows:

According to the Amendments, the subsoil use right for exploration on understudied subsoil areas (list of the areas is approved by the competent authority) may be granted on the basis of direct negotiations. In this case, an application for obtaining the subsoil use right in such a procedure can be filed by any person.

Upon receipt of the application, the competent authority shall publish on its website information on the application filed with the reference to an appropriate block. If, within 5 business days after such publication, there is one or more applications filed for the same block, the subsoil area will be put up for auction, and the 'simplified' procedure terminates.

Size of subsoil area granted under the simplified procedure may not exceed 10 blocks; each is of 1 minute in a geographic coordinate system.

The subsoil use contract, in case of a simplified procedure, shall be based on a standard contract (rather than a model contract, as in other cases). The form of the standard contract is subject to approval by the competent authority and, presumably, will include:

- amount of obligations for contributions to the socio-economic development of the region and its infrastructure on a condition of their annual increase. This annual increase is aimed to encourage the subsoil user to complete exploration as soon as possible;
amount of the minimum cost by type of activities and by years;
- obligation to pay the subscription bonus.

In this case, the Law provides that such a contract will not provide for the local content obligation in staff, goods, works and services, and the corresponding exploration project will be approved by the subsoil user independently after the conclusion of the contract.

Moreover, the draft subsoil use contract concluded under a simplified procedure is not subject to state expertise.

3. **Reduction in Number of Expertises and Project Documents**

3.1. **Expertise of Project Documents**

According to the Amendments, exploration project and project of appraisal works that does not include pilot production or trial production are subject to the environmental expertise only.

Otherwise, the project documents, as before, are subject to sanitary-epidemiological and ecological expertise, as well as expertise in the area of industrial safety.

3.2. **Expertise of the Subsoil Use Contract**

A draft subsoil use contract, according to the Amendments, shall be subject to legal review only, and production contract - legal and economic review.

4. **Changes in the Procedure for Agreement on the Transfer of the Subsoil Use Right and Related Objects**

4.1. **Reduction in the Scope of Priority Right**

Pursuant to the Amendments, the state has the priority right to purchase the subsoil use right/related objects only in respect of subsoil, deposits of strategic importance (the respective list is approved by the Government).

However, this change does not affect the need to obtain permit for the alienation of subsoil use rights or related objects specified by Article 36 of the Law. This means that alienation of the subsoil use rights or related objects in the general case still requires the permit from the competent authority. However, when such permits are issued in respect of subsoil areas/deposits that do not have strategic importance, the priority rights is not considered so the time for processing application will reduce from 70 days to 20 business days.

4.2. **Ban to Cancel the Application**

Please note that the application for the alienation of subsoil use rights (or related objects) after its filing cannot be cancelled or revises during 3 months. This means that in while the application is under consideration, the applicant will have no right to revise the terms of the relevant transaction, for which the permit is applied (including, with respect to the price).

5. **Oil Spills on Waters**

The Subsoil Law now contains a new Article 95-1 on oil spills on water to enhance the security of oil operations on water. Thus, the new Article introduces the concept of an oil spill on water, as well as levels of the spill. Spills are divided into 1, 2 and 3 levels. In addition, the Article provides for the subsoil user's actions on spill prevention and response.

6. **Technogenic Mineral Formations**

The Amendments have significantly detailed the regulation of the legal status of production of technogenic mineral formations (hereinafter - the 'TMF').

Thus, pursuant to the Amendments, the technogenic mineral formations shall be in the state ownership, when:
• they were dumped before 30 May 1992;
• they are included in the state fund of mineral resources;
• they were dumped after 30 May 1992, but being outstanding in terms of payment of the tax on mineral extraction and(or) royalty.

Technogenic mineral formations shall be in the subsoil user’s ownership, when:
• they were dumped after 30 May 1992, and the tax on mineral extraction and(or) royalty were paid thereon;
• formed from raw materials imported to Kazakhstan.

Processing of TMG owned by a subsoil user is not considered as subsoil use operations. This means that the owner has the right to process TMF at own discretion.

If TMF are in state ownership and extraction of minerals therefrom requires to conclude a contract for the production of TMF, such a contract shall be concluded by direct negotiation.

7. **Transformation of the Contract Area**

According to the Amendments, a subsoil user engaged in exploration for solid minerals may apply for a permit to allot a part of its contract area for an individual contract. The allotted (separated) area section is subject to a new contract, which the old contract shall be amended accordingly.

Thus, the contract area may be only separated subject to the permit of a competent authority. In this case, when applying for such a permit, the applicant must provide geological, mining, technological and other information justifying the transformation need.

When the permit is obtained, the new contract shall be signed for a period not exceeding the term of the old contract. The terms of the new contract must comply with the conditions being the basis for issuing the permit, except for the conditions on:

• local content;
• expenses for social and economic development of the region;
• training costs;
• R&D costs.

Such an allotment (transformation) shall entail further amendments to the related contract documents (work program, mine allotment, project).

8. **Other Changes**

Besides the above changes, we would like to note the following novelties to the Subsoil Law as well:

– introduction of the concept of physical and financial amount of liabilities;
– the terms for elimination of breaches of the subsoil use contract are now 6 months for physical amount, 3 months for financial amount, 1 month for other conditions;
– costs to eliminate the impact of the subsoil user’s actions on exhaustion of liquidation fund must be financed by the subsoil user;
– a subsoil user now has the right to extend the contract area, when the producing deposit goes beyond the mine allotment borders subject to the permit of a competent authority;

in terms of solid minerals, a subsoil user may without changing project documents allow deviation from the production volume provided by the contract for up to 20%;
- the list of grounds for unilateral termination of the contract by the competent authority does not any more include the failure to eliminate more than 2 breaches of obligations specified in the project documents;
- when a subsoil user perform its financial liabilities less than for 30% for two consecutive years, the competent authority may unilaterally terminate the contract (due to the contracts stability, such provision shall be applicable for those subsoil users, who previously entered into the contract, subject to respective supplements).

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In general, we are of the opinion that the Amendments can be regarded as positive developments in the legal regulation of the subsoil user's activities in Kazakhstan. It can be expected that due to the simplification of the procedures for the transfer of subsoil use rights, such transfers will be faster and more often. As to the subsoil users engaged in the production of solid minerals, their operations are significantly simplified due to the fact that they does not need to make changes in design documents because of minor deviations. Moreover, a simplified exploration should give a strong flow of investments in exploration in Kazakhstan. Therefore, despite the fact that a number of shortcomings of the Subsoil Law was not covered and eliminated by the Amendments, however, the greater part thereof can be considered as eliminated and a number of barriers for exploration activities - as not relevant.