

## energy transactions

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## Proposed Amendments to Kazakhstan Subsoil Use Legislation

*Amendments to the Subsoil Law, Licensing Law, and Administrative Code affect subsoil users.*

As part of the Republic of Kazakhstan government's efforts to establish greater control over essential elements of the Kazakh economy and to fill existing gaps in the law, the Ministry of Oil and Gas of Kazakhstan (MOG), the country's competent authority for hydrocarbon subsoil use contracts/licenses, has drafted a set of Proposed Amendments to three statutes: the Subsoil Law (SL), the Licensing Law, and the Administrative Code. The Proposed Amendments have been provided to various state authorities in draft form for their consideration and comments before being submitted to the Parliament. It is expected that they will be submitted within the next few months, but this is not yet certain. This LawFlash highlights the possible key changes that are anticipated by the Proposed Amendments.

### State's Priority Right over Strategic Objects

The SL currently contemplates broad priority rights for the state to acquire subsoil use rights as well as objects related to a subsoil use right (such as shares in a subsoil user company) prior to their being offered to a third party by the holder of such right or object.

The Proposed Amendments would reinforce the state's priority right with respect to those subsoil assets viewed by the state as strategic objects—property of strategic importance to the RK that may have an impact on the national security of RK (typically major deposits)—while possibly simplifying the normally onerous approvals procedures necessary to offer nonstrategic subsoil assets to a third party. While the simplification of these procedures is the likely objective of the Proposed Amendments, strong opposition in Parliament cannot be ruled out, and the list of strategic objects may be expanded.

### Oil Spillage at Sea and Internal Water Reservoirs

The Proposed Amendments add new provisions dealing with oil spillage. The amendments do the following:

- Include a new definition of "Oil Spill at Sea" and of three degrees of oil spills, differentiated by the gravity of the spill.
- Impose obligations on subsoil users to develop and approve oil spill prevention and cleanup plans and to hire a specialized oil spill cleanup organization.
- Require subsoil users to secure a standby bank guarantee to finance the cleanup of oil spills.
- Vest the central government and local governors with competence to approve oil spill prevention plans.

### Curing Breach of Obligations Under Subsoil Use Contracts

The current SL does not set deadlines for curing curable breaches. The following deadlines to cure relevant subsoil use contractual breaches are proposed (running from the date of receipt of written notice):

- Nonfulfillment of nonfinancial (quantity/volume) obligations: not more than six months
- Nonfulfillment of financial obligations: not more than three months

- Nonfulfillment of other contractual obligations: not more than one month

## Trust Management Over Forced Relinquished Assets

Under the current SL regime, subsoil contracts are transferred upon termination to a government-appointed trust manager. The amended SL will outline the following aspects of this asset transfer:

- Time frame for the transfer to trust management
- Liability for damages and losses during the period between the relinquishment of the asset and appointment of the trust manager
- Types of expenses that must be reimbursed to the previous owner of the subsoil rights
- Trust manager's fee
- Assignment of trust management to the trust manager's subsidiary
- Exemption for the trust manager to be able to operate without license(s) for a period of up to six months, during which time it must apply for rights to such license(s)

## Other Proposed Amendments

- **Administrative liability.** If amended, the Administrative Code may establish separate administrative liability for, *inter alia*, (i) noncompliance with the terms of project documents, (ii) violation of statutory requirements as to construction and exploitation of artificial islands and other facilities at sea, and (iii) unauthorized gas flaring. MOG will have additional law enforcement authority over subsoil-use-related administrative violations.
- **Additional funding dedicated to environmental cleanup.** The subsoil user may have to secure additional funding if the amounts in the so-called liquidation fund are not sufficient to eliminate the consequences associated with the subsoil use. Information regarding the liquidation fund must be included in the application for waiver of the state's priority right in the event of a subsoil right transfer.
- **Insurance.** An exhaustive list of risks to be insured against by the subsoil user will be provided in the SL.
- **Author's supervision.** Organizations that develop project documents may have the obligation to supervise the implementation by the subsoil users of the project documents. Their implementation report would need to be attached to the subsoil users' work program implementation report.
- **Review of feasibility studies.** Clarification will be provided as to the role of the Ministry of Economic Development and Trade as the competent body responsible to conduct the economic review of feasibility studies.

## Contacts

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