

International **Comparative** Legal Guides



Oil & Gas Regulation **2021**

A practical cross-border insight into oil and gas regulation work

16th Edition

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1 Overview of Natural Gas Sector

1.1 A brief outline of your jurisdiction's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

In the global ranking for oil reserves in 2020, Kazakhstan took 11th place in the world with a volume of 30 billion barrels.

In the period of January–October 2020, Kazakhstan produced 61.2 million tons of crude oil, 6% less than in 2019. In monetary terms, the volume of crude oil production amounted to KZT 6.5 trillion.

The reduction in production of crude oil is provided for by the OPEC+ agreement, which Kazakhstan joined in April 2020. Thus, in May, oil production was reduced to 9.7 million barrels per day ("bpd") for three months. From August, the alliance continued to reduce production, but to a lesser extent – to 7.7 million bpd until the end of 2020.

According to the Ministry of Energy of Kazakhstan, the average daily oil production (excluding gas condensate) in Kazakhstan in June 2020 amounted to 5.3 million tons (1.297 million bpd).

In Kazakhstan, there are two key regions for oil production: Atyrau and Mangistau, which accounted for 64.3% and 22.8% of production, respectively. The following companies operate in these regions: North Caspian Operating Company N.V. branch (Kashagan field); Tengizchevroil LLP (Tengiz field); Embamunaigas JSC; Karazhanbasmunai JSC; Mangistaumunaigas JSC; and Karakudukmunai LLP, among others.

1.2 To what extent are your jurisdiction's energy requirements met using natural gas (including LNG)?

Based on information from official sources, around 80% of the country's energy needs are met by natural gas. Although the domestic production volume allows the Republic to meet its needs for gas, certain regions are still experiencing a gas shortage. The Beineu – Basoy – Shymkent pipeline provides gas distribution for the southern regions of Kazakhstan.

Back in 2014, the government approved the "Concept for the development of the gas sector of the Republic of Kazakhstan until 2030". The document specified the features for the sector's development: a general scheme of gas distribution until

2030, according to which gas distribution should be spread to 11.5 million people. In addition, there are plans for gas supply to cover more than 1,600 settlements. To this end, in 2020, investment projects were implemented in nine regions of the Republic, extending the total length of gas pipelines in Kazakhstan to more than 7,000 km.

1.3 To what extent are your jurisdiction's natural gas requirements met through domestic natural gas production?

Today, the level of gasification in the country is almost 60%. Nine regions have a gas supply, these being mainly western and southern. At the same time, some parts of the central and northern regions still remain without gas. However, modernisation plans are aiming at improving the situation in the near future.

1.4 To what extent is your jurisdiction's natural gas production exported (pipeline or LNG)?

The largest volume of natural gas production was in Atyrau region (45.3%, 11.2 billion cubic metres – +18.6% per year). West Kazakhstan region produced 36.6% of the country's total gas production volume (9.1 billion cubic metres – +5%). Aktobe region produced 10.5% (2.6 billion cubic metres – -12.2%). Kazakhstan exported 6.3 billion cubic metres of natural gas in the period January–April 2020. China became the main importer of Kazakhstani natural gas. In four months, Kazakhstan exported to China 2.7 billion cubic metres of natural gas worth USD 566.1 million. The annual growth of exports to China in physical terms amounted to +7.4%, or in monetary terms, +2.5%. 2.1 billion cubic metres of natural gas, worth USD 101.5 million, were exported to the CIS countries.

231,800 tons of crude oil worth USD 66 million were exported to the CIS countries. The main importer of Kazakhstani oil among the CIS countries is Uzbekistan.

37.1 million tons of oil, amounting to USD 15 billion (99.6% of all exports in monetary terms) was exported to the rest of the world. The largest volumes of exports were to Italy (9.6 million tons), the Netherlands (4 million tons) and India (3.6 million tons).

2 Overview of Oil Sector

2.1 Please provide a brief outline of your jurisdiction's oil sector.

As the industry's commercial guide provides, Kazakhstan is ranked 11th in the world in terms of proven oil reserves (producing

1.73 million bpd in 2017). Kazakhstan has the Caspian Sea's largest recoverable crude oil reserves. While current proven oil reserves total 30 billion barrels, possible onshore and offshore hydrocarbon reserves dwarf proven reserves, with an estimated 60–100 billion barrels left to uncover, mostly in the Kazakh part of the Caspian Sea. Some experts estimate that the offshore Kashagan field alone may contain 35 billion to 50 billion barrels of oil. Kazakhstan's vast natural resources are projected to meet 2–3% of predicted global oil demand in the next decade.

The Government of Kazakhstan and foreign investors continue to focus heavily on the hydrocarbons sector, which, since 1991, has received approximately 60% of the foreign direct investment in Kazakhstan, and constitutes approximately 53% of its export revenue.

The national oil and gas company, KazMunaiGas (KMG), is largely responsible for arranging the temporary exploration and production rights for oil and gas blocks. It also plays a role in almost all contracts with foreign oil and gas companies. Kazakhstan's share of the Caspian Pipeline Consortium (CPC) is also included in KMG's portfolio. KMG holds stakes in 47 enterprises conducting petroleum operations (including TengizChevrOil and the North Caspian Operating Company), pipeline and sea transportation of hydrocarbons and water as well as services.

Kazakhstan attracts significant investment in its vast upstream oil and gas resources, and it is more crucial than ever that the Government multiplies its efforts to increase the attractiveness of its investment climate. For example, by the time the huge offshore Kashagan project started commercial production in October 2016 after years of delays, investment in the project was estimated at USD 50 billion. Kazakhstan plans to increase investment in the oil and gas sector through innovation development and investment stimulation measures that are set forth in the new Subsoil Use Code and in the Tax Code.

2.2 To what extent are your jurisdiction's energy requirements met using oil?

Since only a small part of the energy needs of Kazakhstan are met with the use of oil, as Kazakhstan's power generation largely comes from coal-fired power plants, the oil industry accounts for about 5% of the country's energy requirements.

2.3 To what extent are your jurisdiction's oil requirements met through domestic oil production?

According to the Ministry of Energy of Kazakhstan, Kazakhstan's production of oil and condensate reached 64.7 million tons in January–September 2020, with 20.2 million tons produced at the Tengiz oilfield, 11.5 million tons at Kashagan and 9 million tons at Karachaganak.

It is worth mentioning that for the first nine months of 2020, Kazakhstan's oil exports totalled 52.2 million tons. Kazakhstan also produced 41.6 billion cubic metres of natural gas during 2020. In 2020, domestic natural gas consumption reached 11.1 billion cubic metres, while natural gas exports reached 10.3 billion cubic metres. Other measures include 11.5 million tons of refinery throughput, 3.24 million tons of petroleum refining and 3.42 million tons of diesel fuel production.

2.4 To what extent is your jurisdiction's oil production exported?

Exports in Kazakhstan increased to USD 3,764.80 million in October 2020 from USD 3,563.50 million in September, one

month prior. Kazakhstan has an export-oriented economy, and is highly dependent on shipments of oil and related products (73% of total exports). Kazakhstan's other exports include: ferrous metals; copper; aluminium; zinc; and uranium. Its main export partners are: Italy (18% of total exports); China (12%); Netherlands (11%); Russia (10%); and France (6%). Others include Switzerland, Ukraine and Canada.

3 Development of Oil and Natural Gas

3.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of oil and natural gas reserves including: principal legislation; in whom the State's mineral rights to oil and natural gas are vested; Government authority or authorities responsible for the regulation of oil and natural gas development; and current major initiatives or policies of the Government (if any) in relation to oil and natural gas development.

Exploration and production of oil and gas as well as all other minerals is controlled by a number of laws and directives. The main legislation is the Code of the Republic of Kazakhstan "On Subsoil and Subsoil Use" (hereafter, the "**Subsoil Code**"). The Subsoil Code is the essential law controlling the oil and gas and mining sector, which sets out the fundamental legal framework.

The legal regulation of the subsoil sector, according to the Subsoil Code, is based on the following principles: rational management of the State's subsoil reserves; subsoil use in return for a fee; ecological safety during subsoil use operations; availability of information; and stability of subsoil use conditions.

In general, the duties of the State with regard to management of the subsoil are allocated to the central Government, competent body and/or local executive bodies. The government is vested with the responsibility for organising and managing the State subsoil stock, outlining subsoil allotments, establishing the procedures for the conclusion of subsoil use contracts/licences, and appointing the "competent body" for execution and implementation of contracts/licences and overall monitoring of compliance with subsoil use legislation. The competent body appoints a special committee that conducts the auctions, following which the subsoil use contracts are executed. Local executive bodies grant land plots to subsoil users, supervise the protection of the land, and participate in negotiations with subsoil users for environmental and social protection, among other functions.

3.2 How are the State's mineral rights to develop oil and natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

The subsoil use rights to develop the oil and gas reserves are acquired when a contract or licence is granted, can be transferred based on civil and legal transactions, and can be transferred in accordance with legal succession procedures following corporate reorganisation, except for reformation or inheritance. Subsoil use rights are granted by the State on the basis of a subsoil use licence and subsoil use contract.

A subsoil use licence is required to perform the following operations: geological study; exploration of solid minerals; use of subsoil space; and prospecting.

A subsoil use contract is required to conduct subsoil exploration and production.

3.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

The right to subsoil use is granted to conduct the following operations:

- 1) exploration and production – the exploration period lasts for six years, with a possible extension period for a maximum of 12 years or, in cases of offshore operations and complex explorations (for wells that are 6,000 or more metres deep), they last for nine years, with a possible extension for a maximum of 18 years. The production period cannot exceed 25 years, or 45 years for large fields; and
- 2) production – the production period cannot exceed 25 years, or 45 years for large fields.

Subsoil use contracts are drafted on the basis of the model subsoil contract, with deviations allowed in certain cases according to the procedures outlined in the Subsoil Code.

3.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of oil and natural gas reserves (whether as a matter of law or policy)?

The State exercises the pre-emptive right to acquire the transferred subsoil use rights and/or objects connected with the subsoil use rights in relation to strategic objects (fields).

Strategic fields are defined as subsoil plots:

- 1) containing geological reserves of oil exceeding 50 million tons or natural gas exceeding 15 billion cubic metres;
- 2) located in the Kazakhstan sector of the Caspian Sea; or
- 3) containing a uranium deposit.

The Government of Kazakhstan approves the list of strategic fields.

3.5 How does the State derive value from oil and natural gas development (e.g. royalty, share of production, taxes)?

The main value realised by the State from oil and gas developments derives from taxation, its participation in oil and gas contracts and its share in the production from previously executed Production Sharing Agreements.

In general, the fiscal regime that applies to the oil and gas industry consists of a combination of corporate income tax, rent tax on exports, bonuses and mineral extraction tax.

3.6 Are there any restrictions on the export of production?

Except for some of the conditions described below, Kazakhstan has no restrictions on oil exports.

In order to ensure domestic needs are met, oil produced at the exploration phase and a certain amount produced at the production stage shall be sold within Kazakhstan.

The State is entitled to purchase production at a price not exceeding the world market price or agreed under a third-party sales contract. The national operator executes the State's pre-emptive right to purchase raw gas and commercial gas from producers, calculated on the basis of the formula approved by the Government. Additionally, the Government is entitled to

require part or all of the production volume during a military or emergency period.

Some oil products might be restricted by the Government's resolutions, which on a monthly basis approve the transportation schedules of the import and export volumes of oil.

3.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

Currency regulations in Kazakhstan contain certain limitations on financial transactions. The Law "On Currency Regulation and Currency Control" provides that payments between residents and non-residents on commercial agreements for amounts exceeding USD 500,000 are subject to registration with the National Bank of Kazakhstan.

It is necessary to note that the law provides for some exceptions for commercial transactions on the territory of the Astana International Financial Centre ("AIFC") between the participants of this centre.

The repatriation requirement provides for the return of the currency received as a result of a foreign trade operation to the country.

The National Bank also establishes the rules, conditions and procedures for the implementation of foreign exchange control of imports and exports for repatriation.

In addition, the currency legislation of Kazakhstan provides for a special currency regime in the event of a threat to the stability of the security of the economy or the State financial system. This foreign exchange regime is a special regime for conducting foreign exchange operations, the purpose of which is to create conditions for eliminating threats to the security of the economy and the stability of the financial system of Kazakhstan.

3.8 What restrictions (if any) apply to the transfer or disposal of oil and natural gas development rights or interests?

The alienation and/or transfer/disposal of subsoil use rights shall be executed with the consent of the competent authority.

Permission to transfer or dispose of oil and natural gas development rights or interests is not required in the following situations:

- the transfer is in favour of a subsidiary in which at least 99% of the interest, shares or other equity belongs to a subsoil user, provided the subsidiary is not registered in a low-tax country;
- the transfer is among organisations, including legal succession, in which 99% of interest, shares or other equity belong directly or indirectly to the same entity, provided the holder of subsoil use rights is not registered in a low-tax country; and
- the transfer of objects is related to subsoil use rights circulating on an organised securities market.

It should be noted that the preceding list is not exhaustive.

3.9 Are participants obliged to provide any security or guarantees in relation to oil and natural gas development?

Kazakh legislation provides that the right to use subsoil is granted on the basis of auction. The auction offer is provided by a potential subsoil user at the application stage. The auction offer must contain the signature bonus amount, as well as confirmation of

creditworthiness and the ability to cover the announced signature bonus, as well as many other social financial obligations.

The minimum amount of the signature bonus, in accordance with the tax legislation of Kazakhstan, amounts to approximately USD 20,000–USD 70,000, and the winner is determined among other parameters on the basis of the amount of the signature bonus offered.

3.10 Can rights to develop oil and natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

The subsoil use rights may not be transferred to trustee management, except the national company. The subsoil use rights can be pledged, provided the required consents have been granted and the pledge is registered with the competent authority in accordance with the rules for registration of the movable property law. Enforcement of the pledge must be carried out through a public auction.

3.11 In addition to those rights/authorisations required to explore for and produce oil and natural gas, what other principal Government authorisations are required to develop oil and natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

According to the Subsoil Code, subsoil use operation, including forecasting and planning of production, should fall within the ecological law requirements. The main conditions prescribe setting maximum permissible emissions and restricting or prohibiting specific activities or parts of activities. The subsoil use operations shall also meet industrial safety requirements. The operations are prohibited without a positive industrial safety review and positive State ecological review.

Compliance with environmental requirements is governed by environmental regulations, which set out procedures for obtaining environmental permits, and provide for State monitoring and expertise in relation to the environment and natural resources, as well as the protection of the environmental rights of individuals and legal entities.

Moreover, the subsoil user's emergency response obligations may be secured by a guarantee, bank deposit or insurance.

3.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in oil and natural gas development? If so, what are the principal features/requirements of the legislation?

Subsoil use and environmental legislation requires that certain decommissioning procedures be carried out by the subsoil user in accordance with the liquidation or conservation plan, the estimated start and end date and liquidation/conservation plan, which must be approved by the competent authorities. In order to ensure the subsoil user's obligations are fulfilled in relation to clean-up, the Subsoil Code requires subsoil users to ensure the pledged bank deposit is in place, which will secure against these obligations.

Owners maintain a list of abandoned and unpreserved subsurface sites.

3.13 Is there any legislation or framework relating to gas storage? If so, what are the principal features/requirements of the legislation?

The law requires a licence and some permits for construction and operation of underground and above-ground gas storage facilities.

In addition, the Committee on the Regulation of Natural Monopolies and the Protection of Competition of the Ministry of National Economy of Kazakhstan must approve gas storage tariffs (hereafter, the “**Committee on Natural Monopolies**”).

3.14 Are there any laws or regulations that deal specifically with the exploration and production of unconventional oil and gas resources? If so, what are their key features?

Unconventional oil resources are usually distinguished by the fact that their extraction is impossible using conventional measures and requires the use of special methods. When changing the types and/or methods of planned work for the geological study of the subsoil, as well as their volumes, the subsoil user is obliged to make the appropriate changes in the project documents and submit them to the authorised body for the study of the subsoil.

3.15 What has been the impact, if any, of the “energy transition” on the oil and gas industry in your jurisdiction, and are there any policies or laws/regulations that require the oil and gas industry to decarbonise?

On 2 August 2016, Kazakhstan signed the Paris Agreement under the UN Framework Convention on Climate Change, dated 12 December 2015, and ratified it on 4 November 2016. Thus, the Republic of Kazakhstan stated its contribution would be in the form of an unconditional reduction of greenhouse gas emissions by 15%, as well as a conditional (in case of international support) reduction of 25% by 2030 from 1990 levels. In 1990, Kazakhstan's total emissions amounted to 389 million tons of CO₂-equivalent, which means that by 2030 Kazakhstan should not exceed emissions equal to 330 million tons of CO₂. To this end, Kazakhstan is undertaking a set of market mechanisms, which include a system of emissions trading, projects to reduce emissions and absorption of greenhouse gases, renewable energy projects, as well as the development of a green investment market. It should be noted that since the ratification of the Kyoto Protocol in 2009 (10 years after signing), the regulatory framework of Kazakhstan has been supplemented with significant changes to the current Environmental Code. More than 40 legal acts were adopted, and additional legal measures are to be taken.

CO₂ emissions are mainly regulated by the following legislative acts:

- the Ecological Code of the Republic of Kazakhstan, dated 9 January 2007 (as further amended), in particular, Chapter 9-1;
- the rules for maintaining the state register of carbon units, approved by the Minister of Environmental Protection of the Republic of Kazakhstan in Order No. 147-п, dated 10 May 2012;
- the Greenhouse Gas and Carbon Emissions Trading Rules, approved by the Minister of Environmental Protection of the Republic of Kazakhstan in Order No. 151-п, dated 11 May 2012; and
- the rules for issuing, modifying and paying off quotas for greenhouse gas emissions, approved by the Minister of Energy of the Republic of Kazakhstan in Order No. 292, dated 28 June 2016 (with amendments as of 3 November 2020).

The Ministry of Ecology, Geology and Natural Resources took initiative towards economy decarbonisation by approving the “Concept of low-carbon development of Kazakhstan” until 2050. Within the framework of the Concept, the Ministry is

developing a number of strategies for decarbonisation of the economy, and the Concept is due to be approved in the first half of 2021.

4 Import / Export of Natural Gas (including LNG)

4.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

The Law on Gas and Gas Supply (the “**Gas Law**”) establishes provisions for the State’s pre-emptive right to purchase raw and commercial gas, exercised through the national operator, and further introduces the regulation of gas sales. The Gas Law introduces rather strict regulations on gas and the gas supply sector, which may adversely affect the investment climate in Kazakhstan, since it introduces a number of restrictions on particular types of activities and significant State control over the sale of gas in the country, which expands the possibilities for nationalising the components of the gas supply system.

Commercial gas transportation

The following gas transmission companies have the exclusive right to execute the transportation of commercial gas by trunk pipeline outside of Kazakhstan:

- 1) the national operator (KazTransGas JSC);
- 2) producers of commercial gas;
- 3) subsoil users and the owners of commercial gas produced during processing of their raw gas; and
- 4) the entities which transport gas produced abroad through the territory of Kazakhstan.

The following entities carry out the wholesale of commercial gas:

- 1) the national operator (KazTransGas JSC);
- 2) producers of commercial gas;
- 3) subsoil users and owners of commercial gas produced during processing of their raw gas;
- 4) owners of commercial gas produced outside of Kazakhstan and imported for consumption purposes;
- 5) owners of commercial gas produced from Kazakhstan’s natural gas outside of Kazakhstan; and
- 6) the gas transmission companies in the event of the sale of gas to the national operator and/or to the owners of gas filling compressor stations.

Wholesale of LNG (cross-border sales)

Wholesale may be conducted by the following entities:

- 1) producers of LNG;
- 2) owners of LNG produced outside of Kazakhstan and imported into Kazakhstan for consumption;
- 3) owners of LNG produced during processing of their hydrocarbon feedstock;
- 4) the gas network companies in the event of the sale of LNG to the owners of gas filling stations or to gas stations;
- 5) owners of LNG, acquired from 1) and 2) in case the sale will occur outside of Kazakhstan; and
- 6) owners of gas filling points and autogas filling stations.

5 Import / Export of Oil

5.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of oil and oil products.

The State regulation of cross-border sales or deliveries of oil

and oil products is carried out through various instruments, including customs duties, taxes, and requirements for preliminary booking in the transportation schedule, which is approved annually. The relationships between Customs Union members are further regulated by the Union’s regulations.

Transfer pricing regulations are also applicable to cross-border sales of oil and oil products.

6 Transportation

6.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

The main legislative basis for the construction, ownership and operation of trunk pipelines is the Law on Main Pipelines (“the **Law on Pipelines**”) and also includes a further step in the efforts of the Government of Kazakhstan to control strategic areas of the country. The Republic of Kazakhstan has a priority right to a share of at least 51% (which will pass through the National Company) in any new trunk pipeline projects. The priority right gives Kazakhstan the right to jointly participate with investors in the creation and/or construction of new trunk pipelines.

An exception to the priority right of Kazakhstan is the expansion of existing trunk pipelines. The Law on Pipelines reflects the provisions of the Civil Code and the Law on National Security, which give Kazakhstan official and priority rights in connection with the alienation of main pipelines and direct or indirect interest in “strategic facilities” – property of strategic importance to the national security of Kazakhstan.

Please note that gas pipelines operators will also need to obtain a licence from the licensing authority.

6.2 What governmental authorisations (including any applicable environmental authorisations) are required to construct and operate oil and natural gas transportation pipelines and associated infrastructure?

Since the priority right for the construction of new pipelines belongs to the State, an investor intending to build a new trunk pipeline should submit a commercial proposal to the competent authority. If Kazakhstan waives its priority right, such an investor can participate, develop and build a trunk pipeline independently or by any other party on terms that are no more favourable than those offered by the Republic of Kazakhstan.

The competent authorities issue special licences for the design of oil pipelines, construction and repair and installation work on the trunk pipeline network, gas pipelines, processing plants and other infrastructure, including other permits during construction.

6.3 In general, how does an entity obtain the necessary land (or other) rights to construct oil and natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

According to the Law on Pipelines, the gas pipeline network is recognised as one property complex. The Pipeline Act provides that trunk pipelines may be privately or publicly owned, with the exception of individuals and foreign legal entities. Land for construction of the main pipeline receives special “protected

area” status and includes the land occupied by the main pipeline, as well as a buffer zone. The owner of the main pipeline is not obliged to acquire land ownership, although he may receive a temporary land use right in accordance with the general rules of the Land Code.

6.4 How is access to oil and natural gas transportation pipelines and associated infrastructure organised?

The Law on Pipelines, as well as the current legislation on natural monopolies, provides for the right of shippers to equal access to the services of main pipelines, if there is free carrying capacity, subject to the restrictions established by law. If capacity is limited, transportation services are provided as a priority established by the Law on Pipelines, where priority is given to shippers who supply oil to domestic refineries. The Law on Pipelines also provides for the possibility of exchange (swap) operations in order to supply oil to domestic refineries and gas to the domestic market and/or outside Kazakhstan with the written consent of the owner of the pipeline (or another person legally with pipeline rights) and the competent authority.

Transportation is prohibited by the transport organisation if the commercial gas does not meet the national technical standards or is not provided alongside documentation regarding the observance of the preferential right of the State to purchase certain volumes of commercial gas. Similar requirements for compliance with technical requirements apply to oil transportation.

6.5 To what degree are oil and natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

Kazakhstan is directly connected with the transport infrastructure of Russia. Oil and gas pipelines are interconnected and subject to the rules and supervision of the Government.

According to Kazakh legislation, the schedule for transporting oil through trunk pipelines is developed in accordance with the relevant agreements between the owner or operator and the company for subsoil use. The schedule has been developed taking into account the internal needs for supplies of the Republic of Kazakhstan, determined by the competent authority.

6.6 Outline any third-party access regime/rights in respect of oil and natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport oil or natural gas compel or require the operator/owner of an oil or natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

The supplier may be asked to expand its capacity to accommodate new customers. If the restriction of ownership of new trunk pipelines requiring 51% of State ownership extends to expansion, the costs of expansion will be distributed between the State and the investor. Otherwise, the costs will mainly depend on the investor. The cost of connecting the pipeline to the main pipeline shall be borne by the owner of this pipeline.

The legislation on natural monopolies regarding the principle of equality provides that access to gas transmission pipelines is provided to organisations that supply gas for:

- 1) utilities;
- 2) the public for domestic needs;

- 3) enterprises that use gas as raw materials or as fuel in ongoing technological processes;
- 4) power plants and industrial facilities; and
- 5) other consumers.

In case of insufficient pipeline capacity, access to oil pipelines is granted based on the following order of priority:

- 1) organisations that supply oil to Kazakh refineries;
- 2) owners of trunk pipelines for the transportation of oil and petroleum products;
- 3) entities that transport products to implement decisions of the Government of Kazakhstan;
- 4) entities that have invested in the construction of the main pipeline (or to increase the capacity of the main pipeline); and
- 5) organisations that have committed to supply the minimum mandatory volumes of oil (petroleum) in accordance with agreements with the owner of the main pipeline.

6.7 Are parties free to agree the terms upon which oil or natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

Services (goods, works) for the transportation of oil and gas through trunk pipelines are considered natural monopolies. For natural monopolies, tariffs, terms of their increase, decrease and the limit of services provided are predetermined. According to the law, tariffs for regulated services should not be lower than the cost of expenses required for the provision of regulated services, and also consider the possibility of making a profit, ensuring the effective functioning of a natural monopoly.

Agreements between natural gas market participants are governed mainly by the relevant secondary legislation. There are several main types of agreements on the transportation or storage of natural gas, approved by a decree of the Government of Kazakhstan. The transport agreement, in particular, should include the obligation of the transport system operator to transport at a regulated price according to the volume of natural gas.

7 Gas Transmission / Distribution

7.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

The legislation of Kazakhstan provides for a unified system of commercial gas distribution (unified system), which includes:

- 1) the national operator (KazTransGas JSC);
- 2) commercial gas producers;
- 3) owners of commercial gas produced in the processing of raw gas produced by them;
- 4) entities that transport gas produced abroad through the territory of Kazakhstan;
- 5) owners of commercial gas produced outside of Kazakhstan, from raw gas produced in Kazakhstan under international agreements;
- 6) gas transmission and gas distribution organisations;
- 7) owners of gas filling compressor stations;
- 8) industrial consumers of commercial gas;
- 9) industrial consumers-investors; and
- 10) consumers included in the list of power plants.

The authorised State body monitors the production, transmission, storage and marketing of LNG and commercial and natural gas.

Retail sales of commercial gas are carried out by gas distribution companies, owners of automatic gas filling compressor stations, operators, producers and owners of commercial gas produced outside Kazakhstan and imported for consumption, into retail sales to industrial consumers. The gas consumption of the system is connected directly to the main or connecting pipeline.

7.2 What governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

The law provides for a licence for the operation of the distribution network to operate gas pipelines, which must be obtained from the licensing authority. In addition, this licensing activity must strictly comply with the requirements of legislation on environmental protection, health, safety and subsoil use.

The organisations of the gas distribution network must be accredited by an authorised State body. The activities of distribution network organisations are subject to monitoring by the national operator (KazTransGas JSC).

7.3 How is access to the natural gas distribution network organised?

The tariff for domestic natural gas transportation through main gas pipelines within Kazakhstan and the storage of gas are subject to regulation and approval by the Natural Monopoly Committee. The tariff is determined in compliance with the methodology of tariff calculations for gas transportation services through main gas pipelines. Similar methodology applies to gas storage. The Law on Pipelines, as well as the current legislation on natural monopolies, provides for the right of shippers to equal access to the services of main pipelines, if there is free carrying capacity, subject to the restrictions established by law.

7.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

The State may require the operators of natural gas distribution systems to expand their capacity to accommodate new customers. However, the rights of existing customers should not be infringed or limited to serve new customers.

7.5 What fees are charged for accessing the distribution network, and are these fees regulated?

The Committee of Natural Monopoly regulates the activities of gas distributors. The territorial division of the Committee on Natural Monopolies approves the price of each gas distributor in accordance with government policies in regulated markets.

7.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

With certain exceptions, the Gas Law grants the State the right of first purchase (State priority right) in connection with transfers of:

- gas pipelines, gas distribution and consumption systems and other technological facilities (including installations

and infrastructure) associated with the production, transportation, storage, sale or consumption of commercial gas; and

- shares in common ownership of objects of a single commercial gas supply system and interests in the entities that own such objects.

The State exercises its right through the national operator, KazTransGas JSC. An exception applies when transferred assets are of strategic importance for the sustainable development of a society, such as large gas pipelines (or interests in the entities that are their owners, or the parent companies of such organisations), and in this case the right is exercised directly by the State, taking into account a different set of procedural requirements. However, certain transactions are exempted from the right of priority of the State, including:

- transfer of automatic gas filling compressor stations and gas consumption systems by industrial consumers; and
- transfer of shares between closed branches.

8 Natural Gas Trading

8.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

The Gas Law requires third-party investors to form partnerships with the public and private sectors to process associated gas into commercial gas, liquefied petroleum gas or LNG for subsequent supply to meet the domestic needs of Kazakhstan for gas priority.

The Gas Law ensures the country's energy and environmental security and prioritises domestic gas supply within the concept of a unified system of commercial gas supply. The objects of the gas supply system, regardless of ownership and membership, will be combined into a single system. All of its facilities operate under the control of a single dispatch control department, which ensures reliable operation and safety and provides domestic consumers with commercial gas.

The Gas Law establishes the provisions of the pre-emptive right of the State to purchase raw and commercial gas, exercised through the national operator.

In recent years, China has sharply increased its purchases of LNG. Exports of Kazakh gas to China will be increased to 10 billion cubic metres per year. This became known in the course of bilateral negotiations between the national company KazMunayGas and the China National Petroleum Corporation. Following the meeting, an agreement was reached on a prospective increase in the export of Kazakh gas to China, the press service of the national company reports.

8.2 What range of natural gas commodities can be traded? For example, can only "bundled" products (i.e., the natural gas commodity and the distribution thereof) be traded?

Kazakhstan legislation provides that commercial and liquefied gas may be sold to consumers in order to protect the environment and the health of the Kazakh population. The exception is raw gas sold to industrial consumers as a raw material.

As for commercial gas, the Gas Law defines the following: raw gas; natural gas; LNG; and liquefied petroleum gas.

9 Liquefied Natural Gas

9.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

The regulation of the LNG sphere is still underdeveloped in Kazakhstan and in many respects similar provisions in legislation concerning natural gas are applied to LNG.

LNG in Kazakhstan is produced at three gas processing plants: Tengiz; Kazakh; and Zhanazhol, and at three oil refineries: Atyrau oil refinery; Pavlodar oil refinery; and PetroKazakhstan oil products. The new Gas Law introduced provisions that regulate the transportation, storage, sale and calculation of LNG in Kazakhstan.

9.2 What governmental authorisations are required to construct and operate LNG facilities?

The regulation of LNG is similar to the regulation of natural gas and is ensured by the general rules of the Gas Law and the Licensing Law; see our answers to questions 6.1 and 6.2 for more details.

9.3 Is there any regulation of the price or terms of service in the LNG sector?

Sale of LNG by individuals and legal entities is carried out based on the satisfaction of domestic need priorities within the general plan of Kazakh gasification. The Gas Law provides the regulatory framework for wholesale trade and retail sales of liquefied petroleum gas, as most of Kazakhstan's gas is associated gas.

The Gas Law provides that the wholesale trade of liquefied petroleum gas can be performed only by:

- producers;
- owners of the gas produced during the processing of hydrocarbons owned by them;
- gas network organisations, in the case of selling liquefied petroleum gas to the owners of gas filling points and/or gas filling stations;
- owners of the gas produced outside of Kazakhstan and imported for consumption; and
- gas networking organisations in the sale of the liquefied petroleum gas to the owners of gas filling points and/or automatic gas filling stations.

At the same time, the Gas Law prohibits further gross resale of liquefied petroleum gas, except for resale to the owners of gas filling points and/or automatic gas filling stations by gas networking organisations.

Retail sales of liquefied petroleum gas are carried out solely by:

- gas-distributing organisations;
- owners of gas filling points;
- owners of automatic gas filling stations; and
- producers or owners of liquefied petroleum gas produced during the processing of hydrocarbon raw materials owned by them or produced outside of Kazakhstan and imported for consumption in the retail sale of liquefied petroleum gas to industrial consumers.

9.4 Outline any third-party access regime/rights in respect of LNG facilities.

There is no special regime or rights in respect of LNG facilities in Kazakhstan legislation.

10 Downstream Oil

10.1 Outline broadly the regulatory framework in relation to the downstream oil sector.

The Oil Products Turnover Law is the primary regulation of the downstream oil sector. The Law governs the process of production and turnover of oil products including gasoline, aviation fuel, diesel fuel and mazut.

The Law does not, however, cover that relating to when individuals or legal entities sell oil products for non-entrepreneurial purposes, and oil products production and turnover associated with the framework of mobilisation preparation, mobilisation and defence needs.

The Law sets forth the tasks and objectives of State regulation over oil products production and turnover, characterises in detail the oil product producer duties and obligations, changes the oil products' sale and transportation conditions and regulates their wholesale and retail procedure.

10.2 Outline broadly the ownership, organisation and regulatory framework in relation to oil trading.

Kazakhstan legislation contains certain requirements such as obligations to supply oil products to the local market and obligations to obtain necessary documentation (documents, certificates, declarations, waybills, etc.). Export regulations will apply to trading outside of Kazakhstan.

The Oil Products Turnover Law regulates oil trading by producers of oil products, suppliers of oil, wholesale suppliers of oil products and entities of retail realisation of oil products.

11 Competition

11.1 Which governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the oil and natural gas sector?

The Committee of Natural Monopoly and protection of competition and consumer rights of the Ministry of National Economy of the Republic of Kazakhstan (the "**Natural Monopoly Committee**"), the administrative body responsible for anti-competitive practices on the national level, is responsible.

The Natural Monopoly Committee is the State body responsible for the protection of competition and regulation of prices in natural monopolies.

11.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

The new Entrepreneur Code, enacted in 2016, has replaced previous regulations in this sphere. The restrictions of the new law have similar extraterritorial effects and apply to activities outside Kazakhstan in case such activities restrict competition within Kazakhstan.

There are no sector-specific provisions governing anti-competitive practices in the natural gas sector and the Natural Monopoly Committee applies the relevant provisions of the new law.

Generally, the law prohibits the following anti-competitive activities:

- 1) anti-competitive agreements among market entities;
- 2) cartels;

- 3) vertical agreement, where the resale price is determined or the obligation of the party not to sell to the competitor of the buyer or the seller; and
- 4) anti-competitive actions of the market entities.

11.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

The Natural Monopoly Committee can initiate an investigation upon receipt of a complaint or at its own initiative. It can also request the information necessary for conducting the investigation from any entity operating on the market or from State bodies. Upon completion of proceedings, the Natural Monopoly Committee may impose fines or remedial measures and terminate contracts which violate the competition legislation, etc.

11.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the oil and natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

The Subsoil Code stipulates that an acquisition of subsoil use rights or objects associated with the subsoil use rights are subject to prior permission by the competent authority. In general, a company that holds, directly or indirectly, subsoil use rights or the related rights must seek the State's pre-emptive rights waiver in case the strategic object is involved.

Preliminary consent or the notification of the Natural Monopoly Committee is required for transactions such as:

- reorganisation;
- alienation of more than 50% of interest/shares;
- acquisition of assets of which the value exceeds 10% of the balance sheet value of the market participant;
- acquisition of controlling functions in relation to the market participant; and
- participation of similar persons in controlling organs of more than one entity.

The law provides detailed procedure of the cases the consent or notification is required as well as procedure to obtain such consent.

Also, alienation of shares or equity interests in companies owning strategic assets (e.g. national electricity network, main pipelines, international airports, etc.) requires the preliminary consent of the Government of Kazakhstan.

12 Foreign Investment and International Obligations

12.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

For foreign companies, the same rules apply as for local entities when acquiring interests in gas utility companies, subject to the rules described above in question 11.4. One should also pay attention to the fact that the State has a priority right to own 50% of the newly built main pipelines as already described.

12.2 To what extent is regulatory policy in respect of the oil and natural gas sector influenced or affected by international treaties or other multinational arrangements?

As a matter of law, in case of a clash between domestic legislation and provisions of binding international treaties and agreements, the latter shall prevail. Kazakhstan has joined the International Gas Union, where it is represented by KazTransGas JSC. Many international instruments, along with numerous bilateral governmental agreements, may influence Kazakhstan's regulatory policy in the field.

"The Framework Convention for the Protection of the Marine Environments of the Caspian Sea" was signed by all five states bordering the Caspian Sea. The main goal of this Convention is to protect the Caspian environment from all sources of pollution including the protection, preservation, sustainment and practical use of the biological resources of the Caspian Sea.

In addition, Kazakhstan adopted Governmental Decree No. 548, dated 30 July 2019, which approved the Business Road Map, which stimulates priority sectors of the economy and takes legal steps in respect of attracting foreign investments, as well as activity of the AIFC.

13 Dispute Resolution

13.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the oil and natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to oil and natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; downstream oil infrastructure owners or users; and distribution network owners or users in relation to the distribution/transmission of natural gas.

The parties to the agreement may specify in the contract the arbitration clause, except in cases where the dispute can be resolved only in the State courts of the Republic of Kazakhstan.

In addition, many of the parties in Kazakhstan have started to stipulate the AIFC court and/or AIFC arbitration as a dispute resolution authority.

13.2 Is your jurisdiction a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID")?

Kazakhstan is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Although Kazakhstan has not formally ratified the Convention, it is considered binding with regard to enforcement of foreign arbitral awards.

Kazakhstan has signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and has ratified the Convention.

As of 7 August 2019, the Republic of Kazakhstan is a party to the United Nations Convention on International Settlement Agreements Resulting from Mediation, which was adopted on 20 December 2018. The UN Convention has been signed by 46 countries, including Australia, USA, the People's Republic of

China, Switzerland, Japan, etc. The UN Convention will facilitate international business by enabling disputing parties to easily enforce and execute mediation agreements across borders.

13.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

Under the laws of Kazakhstan, a party may protect its interests by all available legal means, starting from filing a lawsuit in court, ending with indispensable measures of execution of decisions. Generally, there are no difficulties in litigating against Government authorities.

13.4 Have there been instances in the oil and natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

Yes, there have been numerous instances involving foreign corporations with successful outcomes of the court proceedings. Many occasions involved taxation issues, challenging the decisions of the governmental organs on various issues. Examples of such practices have an extremely extensive history, and each case is distinguished by a multitude of details, which unfortunately cannot be investigated, as it is not known whether or not these decisions were fully implemented.

14 Updates

14.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Oil and Gas Regulation Law in your jurisdiction.

The oil and gas industry in Kazakhstan is recognised as one of the most developed industries in the Central Asian region. As can be seen from the dynamic advancements in the legal framework and infrastructure, the Government of the Republic of Kazakhstan has taken the appropriate measures to develop the oil and gas sector.

In the forecast period of 2020–2025, the oil and gas market in Kazakhstan is expected to grow at a compound annual growth rate of less than 2.94%. In addition, the growth of the oil and gas market in the country is dependent on expanding the natural gas pipeline network, increasing refining capacity and improving oil production:

- The upstream sector is expected to increase substantially in the forecast period due to the continued focus on improving oil and gas production. Kazakhstan also has one of the largest oil fields in the world, which has the potential to boost growth in the sector.

- There have been significant oil discoveries in southern Kazakhstan. Economically feasible extraction of the newly discovered oil may lead to a boom in oil production.
- Investment in the oil and gas industry has continued, with a heavy focus on increasing gas processing and refining capacity. An increase in consumption is expected to aid growth in the industry.

14.2 Please provide a brief comment on the impact (if any) of the COVID-19 pandemic on the oil and gas industry in your jurisdiction.

The COVID-19 pandemic affected the world's economies, including Kazakhstan. Many economic spheres were negatively affected, especially small and medium business, non-food retail, aviation, oil and gas, mining, transport, and the power and utilities sectors. In response, the Government undertook measures for economic stabilisation. Such measures included tax incentives, such as:

- an exemption from payment of property tax, the tax on agricultural land, the tax on the producers of agricultural products and the individual income tax of entrepreneurs working under the generally established taxation procedure until 31 December 2020;
- a suspension of interest accrual on outstanding tax liabilities until 15 August 2020;
- a deferral of the payment due date for mandatory payments and taxes until 1 June 2020 (micro, small and medium-sized enterprises);
- large-sized enterprises are entitled to request a deferral of tax payments, referring to the occurrence of *force majeure* circumstances that caused damage to the taxpayer (emergency situations of a social, natural, industrial, environmental nature, military operations and other *force majeure* circumstances); and
- a suspension of the inspections carried out by state revenue authorities for an emergency period; however, the suspension period is not included in the inspection period.

The number of lawsuits increased due to the improper fulfilment or non-fulfilment of obligations under contract, due to the referral to COVID-19 as a *force majeure* circumstance. It is worth mentioning that the validity of COVID-19 as a *force majeure* circumstance was confirmed by the report issued by National Chamber of Entrepreneurs of the Republic of Kazakhstan, "Atameken".

The spread of COVID-19 and OPEC+ developments have had a considerable impact on oil prices and the tenge exchange rate. According to the estimates of the International Energy Agency, global oil demand in 2020 decreased because of the spread of COVID-19 by 9.3 million bpd (-9%). In April, demand decreased by 29 million bpd – down to the lowest levels since 1995. Furthermore, in practice, companies in the oil and gas industry were affected by major job and funding cuts.



Zhanar Abdullayeva is a Partner at Unicase Law Firm, co-heading the oil & gas and mining and energy departments. Zhanar has more than 15 years' experience advising foreign investors, development banks, research institutions, and leading national and international companies on a wide range of legal issues related to foreign investments, oil & gas and mining, energy and renewables, tariffs, project finance, and M&A. Zhanar gained specialised experience by advising major Kazakh companies, international investors and quasi-public sector companies on a wide range of issues, including industry-specific regulation. Zhanar's experience includes advising on major energy M&A transactions in Kazakhstan over the last two years, including transaction and negotiation support, structuring cross-border deals, and advising on regulatory issues. Zhanar has authored many articles and publications, and has also acted as a speaker at many conferences and forums.

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Aybek Kambaliyev is a Senior Associate at Unicase Law Firm. Aybek focuses on corporate law and M&A, dispute resolution and labour law. Aybek advises clients on various issues, from legal support and supervision of labour agreement terminations with top management, to representation of employers' interests in the conciliation committee and in the court of first instance on dismissal issues, performing complex legal due diligence of various Kazakhstan companies.

Aybek has gained substantial experience in supporting M&A deals, within the frameworks of which Aybek has obtained consents and approvals of authorised agencies (i.e. obtaining antimonopoly consents, land use rights). Moreover, Aybek has gained prominent experience within the dispute resolution and litigation practice, closely working with the practice's Head of the Department. Aybek has worked with each client requesting representations of interests in court or debt recovery and been involved in legal disputes connected with corporate and labour issues. Currently, Aybek solely participates in representing the interests of clients in the oil & gas sector at the court of first instance, in proceedings for rehabilitation and bankruptcy.

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Unicase is a full-service law firm having operated in the region of Central Asia for over 10 years. Unicase is considered one of the leading firms according to leading rating agencies. The firm's expert knowledge in law and top-notch client service is recommended for Kazakhstan by the leading international legal directories, such as *The Legal 500*, *Chambers and Partners*, *IFLR1000*, and *Asialaw Profiles*.

Unicase's team is one of the most experienced in the oil & gas and mining sectors in Kazakhstan. We build on outstanding expertise in supporting national and cross-border projects relating to subsoil use, including the acquisition of subsoil use rights and environmental issues. Oil & gas and mining sector projects remain at the forefront of Unicase's practice.

The Unicase team has outstanding insight into legislative specifics, sector-specific intricacies, and commercial considerations relating to

subsoil and subsoil use matters. Within the framework of legal assistance, our lawyers advise governmental agencies, financial institutions, investors, as well as project developers in various economic sectors with end-to-end support during the project's stages.

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