

Mining in Kazakhstan

Kazakhstan's investment attractiveness in mining industry increases each day, mineral resource base of Kazakhstan is striking in its diversity. The government of Kazakhstan creates conditions for developing subsoil sphere, it includes the development of the legal framework, simplification of the procedure for granting the right to subsoil use, establishing the types and classification of minerals, providing open access to geological information. This article describes the main provisions of subsoil use and the procedure for obtaining subsoil use rights in the territory of the Republic of Kazakhstan.

Relevant Authorities and Legislation

Since 1991 when Kazakhstan got its independence from the Soviet Union, a fairly extensive legal framework for subsoil use has been developed on the base of the Soviet regulations. Now the Constitution and the Code of the Republic of Kazakhstan on Subsoil and Subsoil Use (hereinafter "**Code**") regulate mining in Kazakhstan.

The government of the Republic of Kazakhstan is responsible for the conservation, management, development and proper use of a country's environment and natural resources.

Currently, three ministries which are responsible for subsoils in Kazakhstan. The Ministry of Industry and Infrastructure Development of the Republic of Kazakhstan is the authorised body in the field of solid minerals. Meanwhile, the Ministry of Energy of the Republic of Kazakhstan is responsible for hydrocarbons and uranium mining. The Ministry of Ecology, Geology and Natural Resources of the Republic of Kazakhstan is responsible for the study of subsoils.

General provisions on the right of subsoil use

The subsoil use right represents the opportunity to use subsoil on a paid basis within the limits of an allocated site for entrepreneurial purposes within certain conditions. The subsoil use right is given on a paid basis. It can be permanent or temporary, alienable or inalienable. The subjects of the right of the subsoil use can be both local and foreign individuals and legal entities.

Individual or legal entity can obtain the subsoil use right in the following ways:

- 1) from the state by obtaining a licence or concluding the subsoil use contract;
- 2) from the subsoil user by purchasing the subsoil use right or acquiring the participation interests/shares in the subsoil user company or its parent company.

Licence vs Contract

As it was mentioned above, the Republic of Kazakhstan has introduced two types of the subsoil use right:

- licence;
- contracts.

In 2017 the Code has introduced the concept of the licence. The licence is a document which grants the right to use an allocated subsoil plot for operations.

The Ministry of Industry and Infrastructural Development of the Republic of Kazakhstan issues the following types of licences:

- Geological exploration licence;
- Solid Mineral Exploration Licence;
- Solid Mineral Mining Licence;
- General Mineral Mining Licence;
- Location site use licence;
- Artisanal licence.

To obtain the right to subsoil use under a licence, an interested individual or legal entity submits an application to the Ministry of Industry and Infrastructural Development of the Republic of Kazakhstan. It considers the application within ten working days.

In addition, an applicant can receive a licence for exploration or production of solid minerals only for the allocated subsoil plots included in the state subsoil fund management programme (hereinafter “**Programme**”).

In case there are several applicants for the allocated subsoil plot included in the Programme for the first time, applicants will receive the licence on the basis of an auction.

Within the framework of the contractual regime the Ministry of Energy of the Republic of Kazakhstan concludes the contract with the subsoil user.

Under the subsoil use contract the Ministry of Energy of the Republic of Kazakhstan provides the subsoil user with the subsoil use right for a certain period of time. Meanwhile the subsoil user carries out the subsoil use at its own expense and risk in accordance with the terms of the contract and the Code.

Types of contracts:

- Contract for exploration and production of hydrocarbons;
- Contract for the production of hydrocarbons;
- Contract for uranium mining.

Individuals and the legal entities conclude the contracts for subsoil use on the basis of the results of the auction. The winner pays the subscription bonus under the auction after the publication of the results.

Within forty working days from the date of publication of the results of the auction, the winner of the auction concludes a contract in accordance with the standard contract approved by the Ministry of Energy of the Republic of Kazakhstan.

Transfer of the subsoil use right

The subsoil use right (participation interest/shares of the subsoil company) cannot be transferred:

- under a licence for exploration of solid minerals in the first year of its validity;
- under a licence for geological study of subsoil;
- under an artisanal mining licence.

In other cases, the subsoil use right buyer files the application to the Ministry of Industry and Infrastructural Development of the Republic of Kazakhstan which issued the licence or to the Ministry of Energy of the Republic of Kazakhstan which concluded the contract.

Based on the results of the application review, the respective authority reissues the license or concludes an addendum to the contract, or rejects the application within seven business days from the date of application filing.

State regulation of subsoil use operations

The subsoil users must annually submit reports on subsoil use operations. Moreover, the subsoil users must satisfy the obligation of local content in works and services, the amount of which must be at least fifty percent of the total volume of works and services during one calendar year.

Environmental safety in the use of subsoil

Subsoil use operations, including forecasting, planning and design of production and other facilities, must comply with the requirements of the environmental legislation of the Republic of Kazakhstan. Subsoil users must also consider the regulation for the maximum permissible. Under the environmental legislation of the Republic of Kazakhstan the subsoil users must adopt measures preventing subsoil pollution and reduce the harmful impact on the environment. The subsoil use is prohibited without a positive conclusion of the state environmental expertise or without an approval of the authorised body in environmental protection.

Invalidity and termination of licence and contract

A subsoil use licence is terminated in the following cases:

- expiration of the period for which it was issued;
- death of its sole owner;
- revocation or invalidity of a licence;
- subsoil user revokes the issued licence.

Invalidity of a licence:

- submitting false information to the authorised body;
- malicious collusion between an official of the authorised body and the subsoil user verified in the court;
- subsoil user is deprived of legal capacity;
- Code prohibits the license.

The subsoil use contract is terminated in the following cases:

- expiration of the period for which it was concluded;
- death of the person who is the sole owner of the subsoil use right under the contract;
- liquidation of a legal entity that is a subsoil user;
- early termination of the contract or its invalidation;
- termination of the contract by agreement of the parties;
- decision of the Government of the Republic of Kazakhstan to prohibit the use of a subsoil plot;
- subsoil user withdraws the subsoil plot.

The Ministry of Energy of the Republic of Kazakhstan has the right to early terminate the subsoil use contract on the grounds provided for by the Code.

Grounds for invalidation of the subsoil use contract are:

- auction was recognised as invalid;
- contract does not stipulate the mandatory conditions established by the Code;
- submitting false information to the authorised body.

The subsoil use right is an opportunity to use the subsoil on a paid basis within the allocated area for business purposes for a certain period of time. Subsoil use licence or subsoil use contract are ground for establishing the subsoil use right.

In addition, when carrying out subsoil use operations, it is necessary to comply with the legislation of the Republic of Kazakhstan, submit reports to state agencies, and also comply with environmental protection rules.

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