

Essential Legal News and Amendments to Kazakhstan Laws in 2022 and 2021

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Unicase Law Firm below presents the most essential legal news and amendments to Kazakhstan laws in 2022 and 2021.

2022

On 11 January 2022, President of Kazakhstan Kassym-Jomart Tokayev delivered a speech at a meeting of the Majilis of Parliament. During the meeting, the president outlined solutions to pressing political and socio-economic issues.

We have prepared certain key conclusions from the president's speech below. The president has:

- 1) appointed Alikhan Smailov as the new Prime Minister of Kazakhstan;
- 2) declared the 5-year moratorium on salary increases for ministers, akims and MPs;
- 3) instructed the reduction of the recycling fee and the termination of the Operator ROP LLC;
- 4) declared the end of the counter-terrorist operation and the withdrawal of the CSTO contingent within no more than 10 days;
- 5) recognised the failure of LRT project in Nur-Sultan. It is planned to invite national and foreign experts to identify possible options for renewal of this project;
- 6) set the target interest rate inflation corridor of 3-4% by 2025. Therefore, the National Bank and the Agency for Financial Market Regulation and Development were instructed to ensure stability of the currency market until full restoration of confidence in the tenge by internal and external market participants;
- 7) declared the restructuring and radical reorganisation of the security and law enforcement structures, the armed forces and the national security bodies;
- 8) instructed the establishment of the Kazakstan Khalkyna Public Foundation. The foundation will focus on issues in the areas of health, education and social support;
- 9) instructed to conduct the revision of Samruk-Kazyna and all structural subdivisions of the holding company. At the same time, he noted regular complaints about the lack of transparency in the holding company's activities;
- 10) declared the opening of at least five branches of prestigious international universities by 2025.

Oil and Gas

The oil and gas industry is one of the most essential pillars of Kazakhstan's economy. Therefore, certain specialists believe that the new government of Kazakhstan should take into account a number of the proposals put forward. It is proposed to:

- 1) sell oil on the domestic market through commodity exchanges. It is assumed that this will lead to a more transparent sales process between oil producers and refineries.
- 2) bring domestic refineries into the petrol, fuel and lubricant wholesale market. It is assumed that this will increase refineries' revenues and reduce refineries' debts.
- 3) transfer the regulation of the LPG market to the national company QazaqGas. It is assumed that such a move would structurise the market and also allow gas to be sold at a low price on the domestic market and exported at a high price.
- 4) introduce an instrument of direct government financial interest in large oil and gas projects. It is assumed that this will increase government revenue. For example, in Norway, the government oil company does not intervene in the operations of the plants, but redirects the revenues to the Norwegian Fund.
- 5) cancel the priority right to subsoil use of KazMunaiGas. Since the company has shown for 20 years that it cannot launch a project on its own (commercial production). It is proposed to attract new investors to launch projects (with the condition of delivery to the domestic market). It is assumed that this will attract the attention of Western investors.

2021

Tax Code

According to Law No. 77-VII dated 2 December 2021 (Law No. 77-VII), the republican budget for 2022-2024 was approved. In accordance with this Law, the following indicators are established from 1 January 2022:

- minimum wage – KZT 60,000;
- minimum amount of state basic pension payment – KZT 19,450;
- minimum pension – KZT 46,302;
- monthly calculation index (MCI) – KZT 3,063;
- subsistence minimum – KZT 36,018.

According to Law No. 53-VII dated 24 June 2021 (Law No. 53), the following amendments were made to the Tax Code, which will enter into force from 1 January 2021, 1 July 2021, 1 January 2022, 1 January 2023 and 1 January 2025:

- Deferral of individual income tax at source and social tax on liabilities falling due between 1 April 2021 and 1 July 2021 is granted to tax agents who apply the special retail tax regime and to individuals engaged in private practice not later than 1 July 2021.
- From 1 July 2021, there is a minimum limit on the amount of tax debts (6 MCI) below which the tax authorities may not suspend debit transactions on the bank accounts of a taxpayer classified as high or medium risk according to the risk management system (RMS). Also, from 2022 a provision will be introduced allowing banks to open an account immediately after a taxpayer has paid off debts.
- From 1 July 2021, the Tax Code has been amended to establish that all medical expenses incurred by an employer, including reimbursement of expenses incurred by employees in connection with restrictive measures (quarantine, pandemic), are not considered personal income and are not subject to taxation.
- From 1 July 2021, the right to an additional VAT credit applies to legal entities that commission buildings, structures, machinery and equipment for the first time in Kazakhstan for manufacturing activities (excluding metallurgy).
- Starting from 1 January 2022, the following documents will be supporting documents for the deduction of CIT on transactions in an amount exceeding 1,000 MCI along with waybills and acts of acceptance of work performed:
 - invoice; or
 - cash register receipt;which indicates the identification number of the purchaser, recipient of goods, works.
- The new special tax regime using a special mobile application will only be applicable to individual entrepreneurs who use the simplified tax declaration, as tax obligations can be fulfilled via a smartphone. The introduction of the new regime will simplify the registration, termination of activities and fulfilment of tax obligations of the taxpayer.
- Mining is a way of mining cryptocurrencies. A digital mining fee will be charged for the amount of electricity consumed in digital mining. The current amount of the fee will be payable by payers on a quarterly basis. The rate of charge is set at KZT 1 per kilowatt-hour of electricity consumed in digital mining.

- The Entrepreneurial Code has been amended with new provisions defining social entrepreneurship and social entrepreneurship subject whose activities are aimed at solving social problems in society. Amendments to the Tax Code provide for government support measures for social entrepreneurship in terms of granting tax exemptions.

PPP Law

Hereby, we provide an overview of the most significant amendments to the Law No. 379-V dated 31 October 2015 “On Public-Private Partnership” (PPP Law) and the Law No. 167-III dated 7 July 2006 “On Concessions” (Law on Concessions) provided by the Law No. 399-VI dated 2 January 2021 “On amendments and additions to certain legislative acts of the Republic of Kazakhstan on the recovery of economic growth”.

Transfer payment of compensation investment costs:

- The previous version of paragraph 4 of the Article 9 of the PPP Law prohibited transfer of the payment of compensation of investment costs under PPP agreement to earlier periods.

The new version of paragraph 4 of the Article 9 of the PPP Law allows transfer of the payment of compensation of investment costs to earlier periods in case of early commissioning of a PPP facility without reducing the total payment period with maintaining the uniformity of compensation of investment costs.

Qualification requirements:

Own funds:

- The previous version of paragraph 1 of the Article 32 of the PPP Law provided that in order to participate in a tender (auction) or direct negotiations a potential private partner had to have its own funds, amounting to at least 20% of the value of a PPP facility.

The new version of paragraph 1 of the Article 32 of the PPP Law allows a potential private partner to have its own funds or own and borrowed funds, amounting to at least 20% of the value of a PPP facility.

Qualification requirements for a newly established legal entity:

- Article 32 of PPP Law introduces a new paragraph on special qualification requirements for a potential private partner which is a legal entity newly established for the implementation of a PPP project.

Change of material terms of PPP agreement:

- Paragraph 1-1 of Article 46 has been revised. The previous version of the paragraph contained mandatory conditions that should be met in order to be able to amend material terms of a PPP agreement by mutual consent of the parties.

According to the amended version of the paragraph, parties are able to amend the material terms of a PPP agreement by mutual consent without complying with such conditions in case when a PPP agreement stipulated such changes at the time of its conclusion.

Renewable Energy Sector

On 1 April 2021 the new amendments were introduced to the RES Law.

Law on the support of the use of renewable energy sources (RES Law):

- As a result of the amendments, the RES Law started regulating not only traditional renewable energy sources, but also the use of secondary energy resources.
- The RES Law also determines which facilities belong to the SER facilities – technical devices intended for the production of electric energy using SER, the structures, and infrastructure associated with them.
- If a qualified conventional consumer commissions a facility for the use of SER, its share of electrical energy shall be calculated by the Financial settlement centre (FSC) in the manner approved by the authorised body.

Rules for the centralised purchase and sale by the FSC of the electrical energy produced by renewable energy facilities:

- One of the main changes is that the Rules have two new chapters: chapter 9 “Procedure for centralized purchase by the FSC of electricity generated by waste energy disposal facilities” and chapter 10 “Procedure for centralised purchase of flood electricity by FSC”. Both of these chapters determine the procedure for concluding purchase agreements between the FSC and energy producing organisations that use energy from waste disposal and flood electricity.
- Actual values of the volume of flood electric energy supplied to the FSC for the billing period are determined according to the actual balance of production and consumption of electric energy in the wholesale electric energy market of the Republic of Kazakhstan.

FSC pays to the energy producing organisation no later than 15 working days after the expiration of 30 calendar days from the end of the delivery month on the basis of the corresponding invoice.

FSC model contracts with the renewable energy producing organisations:

- Among other amendments, two new model contracts were added to the three existing contracts: a model contract for the purchase of electrical energy by the FSC from an energy producing organisation using energy waste disposal at auction prices (Appendix 4), and a model contract for the purchase of electrical energy by the FSC from an energy producing organisation that produces and supplies flood electric energy to the network at maximum tariffs (Appendix 5).

Rules for organising and conducting RES auctions:

- One of the main amendments is the addition of a new Paragraph 6 to the Rules, which regulates the procedure for organising and conducting auctions for the selection of projects for energy waste disposal.

Environmental Code

On 1 July 2021, a new Environmental Code came into force in Kazakhstan.

The most basic principles of the new Code are indicated below:

- The pollutant must take certain measures to prevent pollution and to control pollution. At the same time, the pollutant is responsible for recovery from environmental damage.
- The Code establishes new approaches to environmental impact assessment.
- Organisations that have introduced new technologies will be exempt from environmental emission charges.
- Environmental emission charges will be used for ecological activities (air and water protection, climate change prevention, waste management, land management, etc.).
- The Code provides for the introduction of an automated system for monitoring environmental emissions.
- The Code provides for increased ecological control. It is proposed to introduce inspections on the living conditions of the population.
- The Code provides for the improvement of waste management. It is planned to reduce the number of unauthorised landfills. For this purpose, licensing of organisations involved in waste recycling and utilisation, as well as a notification procedure for waste collection organisations will be introduced.

**It has been approved that the Code applies to legal relations arising after its entry into force.*

Regulation of Personal Data Protection

The local government is advancing in this field of legislation to comply with the strict rules of protecting personal data prescribed by General Data Protection Regulation.

The most relevant amendments in 2021:

- Prior to the collection and processing of the personal data, the owner and/or operator must fill in the form to determine the list of data that is required to perform their tasks;
- Apart from the owner and operator, third parties are entitled to determine the list of individuals having access to the restricted personal data;
- The owner and/or operator must notify the Ministry of Digital Development, Innovation and Aerospace Industry on unlawful access incidents to restricted personal data;
- The personal data protection measures have been clarified in details. In particular:
 - Division of personal data into restricted and publicly available;
 - Establishment of the list of individuals collecting and processing personal data or having access to such data by the owner and/or operator and third parties;
 - Identification of business processes that contains personal data;
 - Appointment of the individual responsible for organisation on processing personal data (applicable to legal entities);
 - Establishment of the procedure on access to personal data.

Entrepreneurial Code

In 2021, certain amendments were introduced to the Entrepreneurial Code.

The most relevant amendments:

- The Law of the Republic of Kazakhstan dated 2 January 2021 “On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Economic Growth Recovery” (hereinafter the “Law”) developed a new instrument of attracting investments in Kazakhstan – Investment Agreement.

According to the Law, Investment agreements are characterized by the following:

- The sum of the investment of at least 7.5 million MCI (approx. USD 51.8 million);
- Legislative stability for 25 years, with a special focus on tax and labour regulations;
- No approved template or format of the Investment Agreement;
- Decrease of income tax for 100%, land tax and property tax shall not apply to this type of Agreement;

These support measures are applicable in the following sectors:

- Dairy cattle breeding;
- Other types of cattle and buffalo breeding;
- Meat processing and preservation;
- Agricultural and forestry machinery manufacture;
- Drugs production for veterinary purposes.

The government of Kazakhstan is developing new investment initiatives, which will further affect the legislation of the Republic of Kazakhstan.

- From 6 June 2021, the Entrepreneurial Code has been amended with new provisions defining social entrepreneurship and social entrepreneurship subject whose activities are aimed at solving social problems in society.
- From 1 January 2022, a special mobile app regime will be added.

Public Health and the Health Care System

In 2021, certain amendments were made to the Code related to medical personal data, PPPs, the use of pension payments for medical treatment, the sale of tobacco products, and other amendments.

The most relevant amendments:

- Due to the possibility of using pension payments for medical treatment, the Code has been amended with the relevant provisions, as well as the rules on the use of lump-sum pension payments for medical treatment. The new rules provide for the regulation of the use of pension payments in health care.
- In connection with the development of informatization in general, the Code has been amended with relevant provisions, including rules to ensure:
 - Protection of health information objects containing personal health data of individuals;
 - Preservation and confidentiality of personal health data of individuals;
 - Access of patients to their personal data.
- A new paragraph 12 was added to Article 66:

For PPP projects of special significance involving the construction (reconstruction) and (or) operation of healthcare facilities, including concession projects, an additional (special) qualification requirement is imposed on potential private partners, concessionaires or founders (participants) of a new legal entity (consortium) established for the purpose of project implementation, that one of the founders (participants) has experience in implementing projects to construct or operate technically complex healthcare facilities.

- New paragraphs were added to Article 110:

Paragraph 4. Sellers of tobacco products, including heated tobacco products, hookah tobacco, hookah mixture, tobacco heating systems, electronic consumption systems and their liquids, in case of doubt that the purchaser is twenty-one years of age, shall:

- Demand an identity document;
- Refuse to sell tobacco products (if identity document not available).

Paragraph 18. Sellers of alcoholic products shall:

- Demand an identity document;
- Refuse to sell alcoholic products (if identity document not available).

Labour Code

The COVID-19 situation has affected the working habits of citizens. The need to regulate remote work has emerged. Therefore, provisions were added to the Labour Code in 2021:

- New concepts appeared in the code:
 - Combined remote work;
 - Remote work;
 - Notification in the form of an electronic document certified by an electronic digital signature.

The code has also been amended with regard to communication between the employer and the employee. For instance, a remote worker may communicate with his employer electronically and submit certain documents to his employer in electronic format with an electronic signature.

- It has become unnecessary to indicate the place of work in the employment contract if the employee is working remotely.
- A separate Article 138 has been introduced to regulate remote work.

AIFC

- New AIFC Rules on Currency regulation and provision of information on currency transactions in the AIFC (AIFC Rules) have been introduced to regulate currency transactions taking place in AIFC. AIFC Rules apply from 1 December 2021.

AIFC Rules apply to:

- AIFC participants;
- AIFC banks;
- Residents and non-residents of Kazakhstan (transactions with AIFC participants or use of bank accounts opened in AIFC banks);
- Second-tier banks of Kazakhstan with respect to transactions regulated by the Rules.

You can read the full version of AIFC Rules via this link:
https://aifc.kz/files/legals/417/file/aifc-rules-on-currency-regulation_eng_2-with-logo.pdf.

Oil and Gas

Legislation in the oil and gas sector also underwent certain amendments in 2021.

- A new accreditation standard for gas grid organisations has been approved.
- Rules on the issuing of permits for flaring of raw gas have changed.
- Rules for the establishment, allocation and exploitation of sea facilities used for the exploration and (or) extraction of hydrocarbons at sea and inland waters have changed.
- Also, the procedure for issuing licences for the design (technological) and (or) operation of mining (hydrocarbons), petrochemical facilities, the operation of main gas pipelines, oil pipelines, oil product pipelines in the hydrocarbon field has changed.

We hope that the above information will be helpful to you and your business.

If you have any questions, please feel free to contact us.

We keep in touch.

Best regards,
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