

KAZAKHSTAN

New Kazakhstan regulations affecting the hydrocarbons legal regime

The past two years' most important new developments pertaining to the Kazakhstan hydrocarbons legal regime encompass the following blocks of legislation:

- on subsoil, including the Subsoil Law (Law No 291-IV of the Republic of Kazakhstan, On Subsoil and Subsoil Use, dated June 24 2010, as amended);
- on oil and oil products turnover, including the Oil Products Turnover Law (Law No 463-IV of the Republic of Kazakhstan, On State Regulation of the Production and Turnover of Certain Types of Oil Products, dated July 20 2011, as amended);
- on gas and gas supply, including the Gas Law (Law No 532-IV of the Republic of Kazakhstan, On Gas and Gas Supply, dated January 9 2012, as amended); and
- on trunk pipelines, including the Trunk Pipeline Law (Law No 20-V of the Republic of Kazakhstan, On Trunk Pipelines, dated June 22 2012).

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The above regulations are to a large extent complementary and the laws often contain direct references to each other.

In addition to the basic laws, many subordinate regulatory acts have been adopted to develop and clarify the statutory provisions.

The hydrocarbons legal regime is also affected by other new legislation (including Customs Union acts, investment legislation, and so on).

Subsoil legislation

Although the Subsoil Law was adopted a little more than two years ago, it has already been amended nine times since then. The amendments ranged in scope and importance from fairly serious to technical; however, in aggregate, they changed the subsoil legal regime in a number of key points. We would like to highlight some of the innovations below.

Regulations pertaining to trunk pipeline transport have been deleted from the Subsoil Law.

It is established that, pursuant to the Law on State Support of Industrial-and-Innovation Activities, contracts for exploration and/or production operations with entities engaging in industrial-and-innovation activities are to be concluded without tender, on the basis of direct negotiations.

Subsoil users' obligations have been expanded in respect to the annual R&D financing.

The definition of the national subsoil company (national company, or NC), hence, accordingly, its status, has already been changed twice since the adoption of Subsoil Law in 2010. In 2011, it was established that an NC may be organised not only based on a government resolution, but also based on a resolution of local executive authorities of oblasts, cities of national significance and the capital. Thus, the NC definition has been significantly broadened, giving rise to legal prerequisites for organising an indefinitely large number of national companies. In 2012, the NC definition was changed again, now allowing the state or the national management holding to hold just a controlling block of shares in an NC, unlike 100% shareholding as it was before.

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Besides, after adoption of the Subsoil Law, the subsoil-related powers of certain governmental agencies have been changed, the periods allotted for various governmental agencies and commissions to issue and approve a number of subsoil-related documents have been significantly reduced, and certain administrative procedures have been simplified. The Law also underwent terminological and other important adjustments.

In furtherance of the Subsoil Law, many subordinate regulations have been enacted over the past two years; 54 of the 55 contemplated acts being at the level of government resolutions.

The largest block are the acts regulating local (Kazakhstan) content issues. By now, seven different rules and methodologies have been adopted as appropriately designated government resolutions.

Another large block of regulatory acts relates to subsoil contracts and the granting of subsoil rights, including important acts approved by the government, such as the Rules for Granting Subsoil Rights; Model Contracts (for exploration, production and combined exploration and production); Rules for Conducting Expert Evaluation of Draft Subsoil Contracts; Rules for Monitoring and Control over Compliance with Contract Provisions; and other acts.

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Also enacted have been the government resolutions pertaining to geological information and historical costs, as well as acts governing the activities of various commissions, subsoil user reporting, different environmental issues, and so on.

State regulation of production of oil products

Starting from August 2011, the new Law on State Regulation of the Production and Turnover of Certain Types of Oil Products has been in effect in Kazakhstan. The Law governs the relations arising in the process of production and turnover of gasoline, aviation fuel, diesel fuel and mazut. The Law does not, however, cover relations arising when individuals or legal entities sell oil products not for entrepreneurial purposes, and oil products production and turnover relations arising in the framework of mobilisation preparation, mobilisation and defence needs.

THE GAS LAW INTRODUCES A MULTITUDE OF INNOVATIONS RELATED TO INVESTOR ACTIVITIES

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.

products associated with their procurement to agricultural produce growers and heating organisations.

The Law specifies the peculiarities of state regulation over crude oil and/or gas condensate processing and oil products supply, as well as turnover of oil

As an important innovation, the Law abolished the licensing of oil products production activities.

The Law was amended twice in 2012 in the context of amending other Kazakhstan legislative acts (thus abolishing accreditation of oil product wholesalers established in 2011).

Law on gas and gas supply

In January 2012, Kazakhstan adopted the Gas Law, which is new to Kazakh legislation. The law is intended to formulate a new governmental policy in the gas sector, striving to strengthen the role of the state in all gas turnover and supply spheres and decreasing the investment attractiveness of gas processing. As a basic principle, this law seeks to establish the priority of supplying commercial and liquefied petroleum gas to Kazakhstan's domestic market.

The Gas Law introduces substantial state control over natural gas sales in Kazakhstan. In particular, it is set forth that the prices for crude and commercial gas are determined by the subsoil user, but the provisions of the Gas Law significantly limit this right. In particular, the Gas Law secures the procedure for setting the gas prices and the general price-setting and profitability conditions. Besides, the state, represented by the authorised agency, has the right to perform expert evaluation of gas prices and to approve them.

The Gas Law introduces a multitude of innovations related to investor activities in the sphere of gas and gas supply. In particular, the Law secures the state's preemptive right to purchase crude and commercial gas through the "national operator", which limits subsoil users' rights to sell the processed associated gas to third parties. The Gas Law also introduces the state's preemptive right to purchase gas supply system facilities and the participation interests of such systems owners, which creates an opportunity to nationalise the gas supply system facilities.

Trunk pipeline law

In June 2012, Kazakhstan adopted the Trunk Pipeline Law designed to resolve a complex of issues pertaining to the construction and operation of trunk oil pipelines, oil product pipelines and gas pipelines, to the extent not regulated by the gas and gas supply legislation.

The Trunk Pipeline Law contains important innovations, including provisions relating to the state's pre-emptive right to at least 51% participation in any newly-launched trunk pipeline project and the right of ownership to trunk pipelines (a trunk pipeline may be state-owned or privately owned; individuals and legal entities registered under foreign state laws are not allowed to own trunk pipelines).

Also worth mentioning are innovations relating to the institute of the national operator of trunk pipelines, procedure for connecting trunk pipelines to the existing pipelines, procedure of access to product transportation services, operational-and-dispatcher management of pipelines, use of land plots occupied by trunk pipeline facilities, and other provisions.

Customs Union legislation

Starting from January 1 2012, 17 international agreements signed in the framework of the Customs Union (Russia, Kazakhstan and Belarus) and touching upon a number of issues, including petroleum, electric power industry and gas transportation, came into effect, which is sure to impact legal relations between the organisations of the Customs Union member states and other organisations.