

ClientAlert

Mining & Metals

January 2015

Amendments to the Kazakhstan Legal Regime for the Mining Industry

The Law of the Republic of Kazakhstan "On introduction of amendments and additions to certain legislative acts on subsoil use matters" No. 271-V 3PK was adopted on 29 December 2014 and, save for the specified provisions, became effective from 11 January 2015.

Affecting the Subsoil Use Law, the Land Code, the Tax Code, the Code on Administrative Offenses and the Environmental Code, the amendments are primarily aimed at attracting more investments in the industry by liberalizing and simplifying the rules (the "**Amendments**").

Overview of Key Amendments

The key Amendments to the Subsoil Use Law (the "**Law**") include:

Limited state pre-emption right

Pursuant to the Amendments, the state's pre-emptive right to acquire exploration and mining rights as well as associated interests (when disposed) will be limited to the so-called "strategic" deposits and areas. It should be noted that the general requirement to obtain the consent of the competent authority (Ministry of Investments and Development (the "**MID**")) to alienation of exploration and mining rights and associated interests has been preserved.

It is important to note that the minimum mandatory term for the consideration of applications for the MID's consent now has been shortened to 20 business days, while the time frame for the consideration of applications covering the matters of the state's pre-emptive right and the MID's consent remains 70 business days.

The Amendments also limit the ability to withdraw or revise already filed applications requesting the waiver of the state's pre-emptive right within three months from the submission date. Nevertheless, this new rule does not require sellers to sell subsoil use rights and associated interests to the state.

"Strategic deposit" definition

The Government is authorized to approve lists of strategic deposits and areas. Previously, the Government used its discretionary powers to designate deposits and areas as strategic and include them on a list. Under the Amendments, such list must further be compiled based on "strategic" criteria which, in turn, must be developed by the Government as well.



If you have questions or comments regarding this Alert, please contact one of the lawyers listed below:

Maxim Telemtayev
Partner, Astana
+ 7 717 258 26 50
mtelemtayev@whitecase.com

Timur Odilov
Associate, Astana
+ 7 717 258 26 50
todilov@whitecase.com

White & Case Kazakhstan LLP
3rd Floor Block A Business Center Q
Kabanbai Batyr Street, 15a
Astana 010000, Kazakhstan
+ 7 717 255 28 68
+ 7 717 258 26 50

Amendments to the Kazakhstan Legal Regime for the Mining Industry

Disposal of a subsoil use right

The Amendments have lifted the ban on disposing of exploration and mining rights within two years of their being granted.

Termination of contracts

Before enactment of the Amendments, the Law provided that the MID may unilaterally terminate a subsoil use contract if a subsoil user fails to cure more than two previously committed breaches of the obligations under a subsoil use contract or project documents within the time period specified in the MID's breach notification. Pursuant to the Amendments, breaching obligations stipulated by only project documents are no longer a sufficient ground for the MID to terminate a subsoil use contract. At the same time, the Amendments introduced a new, additional ground for the MID to unilaterally terminate a subsoil use contract – breaching financial obligations under a subsoil use contract by more than 70% for two consecutive years.

As regards the time limits for curing breaches, such periods, previously determined by the MID at its discretion on a case-by-case basis, are now contemplated in the Law as follows:

- physical obligations – up to six months;
- financial obligations – up to three months; and
- other contractual obligations – up to one month.

Thus, the MID must establish a specific cure period within these time limits. At the same time, in certain cases, a cure period exceeding the established time limits may be extended upon a subsoil user's request.

Timing for preparing project documents

The Amendments have also extended the maximum time for the development and approval of project documents: (i) from six to eight months for prospecting; (ii) from five to eight months for appraisal; and (iii) from 18 to 21 months for commercial development. In addition, all these periods can be further extended for up to an additional six months if the project documents were not developed and approved in time due to circumstances beyond the subsoil user's control.

Feasibility studies

Feasibility studies are no longer considered as project documents and, hence, as a prerequisite for entering into mining contracts.

Expert review of draft subsoil use contracts

The Amendments abolish certain mandatory expert reviews of draft contracts. From now on, draft mining contracts will be subject to economic and legal expert reviews, while draft contracts of other types will be subject only to legal expert review. The environmental expert review has been abolished entirely.

Expert review of project documents

Industrial safety, sanitation and epidemiological expert reviews of certain project documents at the exploration stage have been abolished. In particular, prospecting project documents and appraisal project documents that do not include test mining are subject to only environmental expert review. Thus, appraisal project documents that do include test mining are still subject to all types of expert review: environmental, industrial safety, sanitation and epidemiological.

Contract by application

The Amendments also introduce a simplified legal regime for exploration for hydrocarbons, solid minerals, therapeutic mud and underground water located in "understudied areas" (to be determined by the Committee of Geology and Subsoil Use of the MID (the "**Geology Committee**")). First, all such areas will be subject to a graticular boundary (or block) system. Second, the maximum size of an exploration area granted under the simplified regime is 10 blocks. Third and most importantly, exploration rights in respect of understudied areas may be granted to any applicant as a result of direct negotiations with the MID. Exploration rights will be granted in proforma contracts. Finally, a holder of exploration rights is exempted from the local content requirements.

Auction as a new method

As an alternative to the existing tendering process, the MID may now grant exploration and mining rights through conducting English type auctions based on signing bonus bids.

Technogenic mineral formations

The Amendments substantially change the ownership nature and legal regime of technogenic mineral formations (tailings, mineral wastes, metallurgical byproducts, etc.) (collectively "**TMF**"). In particular, TMF will be considered as privately owned if: (i) they are formed as a result of the processing of ore imported to Kazakhstan; or (ii) they were dumped after 30 May 1992 provided that the mineral extraction tax and/or royalty levied on minerals contained therein was paid. All other types of TMF are considered to be owned by the state.

Pursuant to the Amendments, operations with private TMF are no longer subsoil use operations. Hence, the use and processing of such TMF will only be regulated by the civil law and the extraction of minerals in that regard will not be subject to the mineral extraction tax.

As regards the new regime for state TMF, the Amendments provide that the rights for extraction of minerals from state-owned TMF will be granted through direct negotiations with the MID.

Amendments to the Kazakhstan Legal Regime for the Mining Industry

Carve-out of a contract area

A holder of exploration rights now may carve out a specific area from a contract to be governed by a separate exploration contract. The carve-out may only be performed upon the prior permission of the MID. A new work programme and project documents must be developed and undergo mandatory expert review for the areas subject to carve-out.

Extension of contract area boundaries

The Amendments have eliminated contradictions between different provisions of the Law that did not allow subsoil users to extend contract area boundaries. Following enactment of the Amendments, subsoil users may extend the boundaries of a contract area upon prior permission from the MID. However, a contract area may not be extended by more than 50 percent of the existing size.

Surrender of a contract area

Before the enactment of the Amendments, the terms of surrender of a contract area were regulated by individual subsoil use contracts. The Amendments require the Geology Committee to develop and approve the general rules for the surrender of contract areas.

General comment

We note that as of the date of this Client Alert the relevant secondary legislation has yet to be developed or brought in line with the Amendments. Therefore, there might be a certain transition period prior to the practical implementation of the Amendments. The statutory period for the adjustment of secondary legislation is one month from the date of enactment of the Amendments; however, in practice it may take longer.