

Kazakhstan Law News Digest for April 2022

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I. Legislative News

Subsoil Use

- The Ministry of Energy of the Republic of Kazakhstan **has amended**: (1) the Standard Contract on Exploration and Production of Hydrocarbons; (2) the Standard Contract on Production of Hydrocarbons; and (3) the Standard Contract on Production of Uranium. To be effective as of **20 June**.

In particular, the following amendments shall be introduced to the Standard Contract on Exploration and Production of Hydrocarbons:

- The subsoil user has the right to enter into a contract with the Ministry of Energy of the Republic of Kazakhstan and the National Chamber of Entrepreneurs “Atameken” for entrepreneurship incentives in the field of hydrocarbons, which are aimed at supporting local producers.
- The term “*local content level*” has now been replaced by “*level of intra-country value*”.
- There is now no reference to a specific per cent of the volume of hydrocarbons in respect of which the Republic of Kazakhstan has priority to purchase from the subsoil user. The volume will be determined on the basis of the total needs of the state, taking into account the needs of the regions.
- The text of the contract now specifies that at the end of the contract term, the subsoil user must stop any operations on subsoil use, except for operations associated with the conservation or liquidation of technological facilities and the consequences of subsoil use.

- The Ministry of Energy of the Republic of Kazakhstan **has amended** the Rules for the formation and maintenance of the register of goods, works and services used in subsoil use operations in terms of the operator of the register. Previously, the register was formed by the Information and Analytical Centre of Oil and Gas JSC; now the Ministry of Energy itself will maintain it.

Competition

- The Competition Authority **has determined** the Methodology for the Development and Implementation of Competition Compliance Acts. These are internal and external acts of market subjects stipulating fair competition rules and methods / ways of risk management. Such acts may be addressed to the Competition Authority for verification of their compliance with the competition legislation. As a result, the Competition Authority will identify the risk levels of competition law violations.
- The Competition Authority **has approved** the Methodology of Competition Analysis in Financial Services Markets; namely, the procedure for determining the level of competition and identifying market dominants / monopolists. This Methodology is aimed at analysing the following sectors:
 - Banks and organisations engaged in certain types of banking operations;
 - Insurance companies; and
 - Professional participants in the securities market.

Land Relations

The Ministry of Agriculture of the Republic of Kazakhstan **has approved** the Rules for Reissuance of the Lease Agreement for Agricultural Land Plots upon a Change of Land User. These rules specify: (1) the procedure for notifying the state authority after the transaction on alienation of the right; (2) the procedure for approval of the transition by the state authority; and (3) the procedure for concluding a new lease agreement with the new land user. The land use right of the new tenant arises precisely at the moment the term changes in the lease agreement are registered with the registry.

Electric Power

The Ministry of Energy of the Republic of Kazakhstan **has introduced** amendments to the Rules of Organisation and Functioning of the Electric Capacity Market and to the Rules of Rendering Services by the System Operator KEGOK JSC in terms of supplementing the conceptual apparatus. In particular, the Rules have been supplemented with the terms “*imported electric capacity*” and “*digital mining*”:

- Imported electric capacity means the average monthly capacity of electric power supplied from outside the territory of the Republic of Kazakhstan.
- Digital mining means the process of calculating operations using a computer’s energy capacity according to the specified algorithms of encryption and data processing, providing confirmation of the integrity of data blocks in the objects of information through a blockchain.

Digital assets

The Ministry of National Economy of the Republic of Kazakhstan **has identified** the Information Security Committee of the Ministry of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan as being responsible for receiving notification of the beginning or termination of activities to issue digital assets, organise trading and provide services for the exchange of digital assets for money, value and other property.

Public Private Partnership (PPP)

The Ministry of National Economy of the Republic of Kazakhstan **has outlined** the Rules for Selection of Concession Projects, the Rules for Conducting the Tender and Preparation of the Tender Documentation in a new version. This is, amongst other things, due to the recent abolition of the status of KPPF JSC and Turar Healthcare NJSC as entities with the exclusive right to provide advisory services for PPP and concession projects.

Civil Legislation

The Government of the Republic of Kazakhstan has submitted a draft law to the Mazhilis of the Parliament of the Republic of Kazakhstan aimed at improving civil legislation. Thus, this law will amend, *inter alia*, the General and Special Part of the Civil Code of the Republic of Kazakhstan (CC), the Law “On Banks and Banking Activity in the Republic of Kazakhstan”, the Law “On Notary” and the Law “On State Property”. Specifically as follows:

General Part of the Civil Code

- **Article 183. Suspension of the Limitation Period.** It is proposed to include “*execution of an enforcement inscription by a notary*” in the list of grounds for suspension of the limitation period.
- **New Article 351-1. Contractual Damages.** It is proposed to introduce a new mechanism of legal protection – contractual damages (*predetermined amount*). The peculiarity is: (1) it will be possible to claim this amount, irrespective of the actual damages (*it is advantageous, if the amount of the actual damages is lower*); (2) in the case of selection of the contractual damages – the right for liquidated damages and for damages according to Article 350 disappears (*i.e. it can mean that if the actual damages exceed the amount of the contractual damages, it will be impossible to claim the excess amount*).
- **New Article 392-1. Warranties and Representations.**
- **New Article 394-1. Contract Negotiations.**

Special Part of the Civil Code

- **New Chapter 39-1. Conditional Escrow.** This chapter provides for a new type of agreement – an escrow agreement. Both bank and notary can be escrow agents. The peculiarity is the impossibility to forcibly withdraw money from an escrow account at the request of third parties.
- **New Chapter 43-1. Agency Agreement.** Under the agency agreement, one person (*the principal*) commissions another person engaged in regular independent activities as an entrepreneur (*commercial agent*) to act in relation to third parties on behalf of, and at the expense of, the principal to negotiate the acquisition of goods (works, services) and / or negotiate the terms of transactions and conclude transactions on behalf of the principal. A commercial agent is both an individual and a legal entity. There is a special list of persons who do not fall under the term “agent”.
- **New Article 921-1. Liability for Harm Caused by Bad Faith Actions in Contract Negotiations.** It is proposed to introduce pre-contractual liability.

International Instruments

- The Parliament of the Republic of Kazakhstan **ratified** the Convention on Part-time Work, adopted in Geneva on 24 June 1994. The Convention equates the rights and interests of part-time workers with those of full-time workers with respect to the following:
 - Annual paid leave or paid holidays;
 - Health and safety at work;
 - Collective bargaining;

- Maternity protection, paid annual leave; and
- Non-discrimination in employment.
- The Parliament of the Republic of Kazakhstan **ratified** the UN Convention on International Settlements reached through mediation in commercial disputes (Singapore, 7 August 2019) with the following reservations:
 - The Republic of Kazakhstan will not apply the Convention to settlement agreements to which it is a party or to which any government agency or any person acting on behalf of a government agency is a party.
 - The Republic of Kazakhstan will apply the Convention only to the extent that the parties to the settlement agreement have agreed to apply the Convention.
- The Mazhilis of the Republic of Kazakhstan **is considering** the Law “On Ratification of the Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Belarus on Trade and Economic Cooperation in the Sphere of Oil and Oil Products Supply to the Republic of Belarus”.

II. Clarifications from the State Authorities

1. **Response** of the Minister of Agriculture of the Republic of Kazakhstan dated 11 April 2022 – “On the definition of the calculation of the land use right redemption”.
2. **Response** of the Minister of Agriculture of the Republic of Kazakhstan dated 22 April 2022 – “Is there a difference between the refusal to grant a land plot and the refusal to grant the right to a land plot?”
3. **Response** of the Minister of National Economy of the Republic of Kazakhstan dated 25 April 2022 – “On the order of providing compensation for investment costs of PPP projects”.
4. **Response** of the Chairman of the Board of the “State Corporation Government for Citizens NJSC” on 25 April 2022 – “The change in the constituent document of the abbreviated name of the LLP does not entail the obligation to reregister”.
5. **Response** of the Chairman of the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan dated 28 April 2022 – “Who pays property tax for joint implementation of activities (consortium)?”
6. **Response** of the Chairman of the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan dated 1 May 2022 – “The modified size of the MCI from 1 April 2022 in the amount of 3,180 KZT will apply only for the calculation of benefits and other social payments, and for the calculation of taxes and penalties will apply the MCI effective as of 1 January 2022, i.e. 3,063 KZT”.

III. Judicial Practice News

Regulatory Resolutions of the Supreme Court of the Republic of Kazakhstan

On 21 April 2022, at the plenary session, the Supreme Court of the Republic of Kazakhstan **adopted** a Regulatory Resolution, “On Application by the Courts of the Legislation on Public Procurement”. The Regulatory Resolution (1) explains the order of pre-trial settlement of disputes arising from the contract, taking into account the rules of public procurement, (2) sets out the consequences of non-compliance with such order, and (3) emphasises to the attention of judges that the pre-trial procedure does not apply to claims for recognition of a potential supplier who acts in bad faith as a participant in public procurement.

Judicial Practice in Civil Cases

Law enforcement under paragraph 4 of Article 25-1 of the Law “On Joint Stock Companies”

If the market value of circulating stock cannot be established according to the results of stock exchange trading on the date of demand for buyout, in the case of a big shareholder who exercises his or her right to buy out a minority share, the market value of stock on the date of demand can be established on the basis of a valuation report, because it is the only way to establish a fair price.

Facts of the case:

- Shares of KazTransCom JSC are listed on KASE.
- On 12 February 2021, its major shareholder of 95.21 per cent, Jysan Ventures LLP (the “Respondent”), demanded redemption of voting shares of a minority shareholder (the “Claimant”) at the price of KZT 5,750 per share on the basis of subparagraph 1 of paragraph 4 of Article 25-1 of the Law “On Joint Stock Companies”.
- Earlier, on 10 February 2021, the Respondent asked KASE for information about the current market price of shares at trading. KASE replied that as of 11 February, there was no market value of the shares because the last time shares of KazTransCom JSC were traded on the stock exchange, on 9 February, the price was KZT 5,750. Thus, in the absence of the market price on 12 February, the Respondent applied the last prevailing market value on KASE, which was KZT 5,750.
- On 18 March 2021, the Central Securities Depository, on the basis of the Respondent’s order, wrote off 3,410 shares from the Claimant’s personal account at a price of KZT 5,750 per share.

Claimant’s position:

- The Claimant does not agree with the repurchase price of KZT 5,750 per share, since this price is not the market price on the date of the request for sale (*i.e.* as per 12 February). The Claimant, referring to the valuation report prepared by the appraiser on the basis of a comprehensive analysis of stock exchange data, financial statements of KazTransCom JSC and other documents, believed that the market price was KZT 8,297 per share. The Claimant claimed damages in the amount of the difference.
- The Claimant asserted that, according to paragraph 4 of Article 25-1 of the Law “On Joint Stock Companies”, the shares should be redeemed at market value on the date of the request for sale (12 February 2021), rather than an earlier date (09 February 2022) as the Respondent claimed.

Respondent’s position:

- The Respondent objected that since the shares of KazTransCom JSC are traded on the organised securities market, the market value of shares is determined according to subparagraph 1 of paragraph 1 of Article 25-1 of the Law “On Joint Stock Companies”; *i.e.* by its determination based on the results of stock exchange trading, rather than on the basis of the appraiser’s report under subparagraph 2 of paragraph 1 of Article 25-1.
- The Respondent argued that since there was no market price as of 12 February 2021, he could reasonably have used the most recent market price as of 09 February 2021.

Court’s position:

- The Court fully agreed with the Claimant’s position.
- The Court considered that the main criterion of paragraph 4 of Article 25-1 of the Law “On Joint Stock Companies” is precisely the determination of the market value on the date of the demand for buyout, and this value can also be determined on the basis of the appraisal report if the value cannot be determined on the basis of trading on the stock exchange.

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In this overview, White & Case refers to the international law firm consisting of White & Case LLP, a limited liability partnership incorporated in the State of New York, White & Case LLP, a limited liability partnership organised under the English law, and all other affiliated partnerships, companies and entities.

This overview is a summary of recent developments in Kazakhstan law and does not constitute legal advice. For advice on a particular matter, please contact a lawyer directly.

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