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Licensing in the construction industry

Construction licensing law has recently introduced category I, II and III construction licenses to differentiate between the levels of complexity and risk involved in various licensed activities. As a result, more and more companies have begun to create consortiums that at first seem to meet licensing requirements. However, it remains unclear whether these practices are permitted by law.

Category I construction licenses are rarely issued as prospective licensees require 15 years of experience in construction and should have their own construction base and equipment. Few companies meet these strict qualification requirements, which is why foreign construction companies seeking to operate in Kazakhstan are forced to create consortiums with eligible companies to reap the benefits that category I licenses provide.

The legal arrangements around consortiums make it an ideal vehicle for this type of arrangement as each entity is entitled to make its contribution to the joint activities. For example, a company holding a construction license would contribute that and head the consortium, while the other company could contribute operations, benefitting from its partner's license.

The question remains, however, as to whether these types of arrangements are permitted by law. Firstly, construction licenses are typically issued following a strict review of compliance with specific qualification criteria to ensure that licensees have the required experience and equipment to perform construction activities. If the consortium "workaround" described above is used, there is a risk that a license could be issued to a company that has not necessarily met qualification criteria.

Secondly, construction licenses are issued in the name of the applicant and are inalienable, whereas under the consortium arrangement, it would appear that the company holding the license would effectively be transferring or sharing it with the consortium partner, which could potentially be treated as a breach of legislation. We understand that the authorities tend to take this position.

However, as legislation does not specifically deal with this issue, it remains a topic for discussion. Furthermore, as clarifications from the authorities are not legally binding, any issues could be resolved by issuing official interpretation of current law, or by introducing amendments to it.

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