

# Legal Alert

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***Government Resolution № 294 dated 25 April 2015 On the Introduction of an Amendments to Government Resolution № 45 dated 13 January 2012 “On the Approval of Rules for setting Work Permit Quotas in the Republic of Kazakhstan, the Rules and Conditions for issuing Work Permits to Foreign Employees and Permits to Employers to hire Foreign Nationals” and On the Introduction of an Amendment to Government Resolution № 836 dated 19 June 2001 “On Measures to implement Law of the Republic of Kazakhstan dated 23 January 2001 On Employment”***

The Resolution has extended the special conditions in place for the authorities to issue specific subsoil use work permits. Subsoil users operating on the Karachaganak, North-Caspian and Tengiz projects, together with their operators, contractors and subcontractors (except for organisations engaged by subcontractors themselves) are not obliged to observe local content requirements for staff until 1 January 2017. At the same time, the list of documents to be filed to support participation in the above projects has not changed.

**The Resolution entered into force on 30 May 2015.**

***Order of the Minister for Health and Social Development № 167 dated 27 March 2015 On the Approval of Rules for Employers to make Guarantee Payments to Banks in the Employment Country and the Size of Payments***

According to the above Order, the authorised body should issue written approval to employers for a refund of guarantees paid by them once the employers in question have confirmed to the internal affairs' bodies that the relevant foreign employee has departed Kazakhstan. Within three working days of receiving an employer's application for written approval for a refund of a guarantee paid the authorised body should request confirmation from the bodies for internal affairs that the foreign national in question has left the country. The bodies for internal affairs have five working days to send the results to the authorised body.

**The Order entered into force on 30 May 2015.**

***Order of the Ministry for Investment and Development № 94 dated 30 January 2015 On the Approval of Rules for providing Subsoil Use Rights to the Construction and (or) Operation of Underground Structures not related to Exploration or Production, and on the Specifics for constructing and (or) operating Underground Structures not related to Exploration or Production***

The Rules establish a list of contracts establishing subsoil use rights to construct and (or) operate underground structures not related to exploration or production, which were concluded based on direct negotiations between official working groups and applicants. Direct negotiations with individual and corporate applicants are conducted by local executive body working groups. The Rules also list the supporting documents that need to be provided with applications.

Negotiations are held over a two-month period from the date applications are received, and may be extended at the applicant's request. The relevant local executive body notifies applicants of the results of direct negotiations within 10 working days of a record of direct negotiations being signed.

The conditions proposed by applicants during direct negotiations and accepted by local executive authorities should be included in the record of direct negotiations, and subsequently in a contract. A contract should be concluded within 24 months of the date a record of direct negotiations is signed.

According to the Rules, subsoil sites suitable for the construction and (or) operation of underground structures not related to exploration or production are only provided for subsoil use after a state review of geological information and an assessment of the environmental impact of planned and actual work.

**The Order entered into force on 28 April 2015.**

***Order of the Minister for Investment and Development № 215 dated 27 February 2015 On the Approval of Rules for concluding Contracts for the State Geological Study of the Subsoil***

The Rules define the procedure for concluding contracts to have the state carry out a geological subsoil study and for providing project documentation.

They also state that a contract may be between the authorised body for subsoil study and use (the "Authorised Body") and either individuals and companies ("Applicants").

After Applicants file their application and supporting documents, the Authorised Body has 10 working days to inform the former of their decision to conclude a contract or reject the application. Project documentation should be provided within three months of the receipt of notification to conclude a contract. The Rules also govern the procedure for extending the deadline for providing supporting documentation.

The Rules also establish the grounds for rejecting contract applications and the documents to be attached to applications.

#### **The Order entered into force on 30 May 2015.**

#### ***Government Resolution № 333 dated 27 April 2015 On the Approval of Rules for the Republic of Kazakhstan to realise its Preference Right to acquire an alienated Subsoil Use Right (Part) and (or) Object related to a Subsoil Use Right, National Holding Company or National Company***

The above Rules were developed in accordance with the Subsoil and Subsoil Use Law and establish a procedure for and periods within which the authorities and national holding company may exercise preference rights related to acquisition of strategic subsoil fields, including:

- applying with a national company or national holding company for an opinion on the viability of exercising state preference rights or otherwise
- producing an opinion on preliminary interest or otherwise, a final decision by a national holding company or national company to acquire rights
- drafting recommendations to acquire or a refusal to acquire an alienated right by an intra-department commission for state preference right issues

The national holding company or national company should be able to acquire alienated subsoil use rights (parts) and (or) objects related to subsoil use rights under conditions that are no worse than those proposed by other applicants.

#### **The Resolution entered into force on 8 June 2015.**

#### ***Resolution of the Board of the National Bank № 32 dated 16 March 2015 On the Introduction of Amendments and Additions to Resolution of the Board of the National Bank № 154 dated 28 April 2012 "On the Approval of Rules for conducting Currency Transactions in the Republic of Kazakhstan"***

According to the amendments, resident legal entities that are not an authorised bank or organisation, when purchasing the equivalent of US\$ 100,000 in foreign currency using tenge in Kazakhstan should attach to the purchase application a copy of the currency agreement according to which the foreign currency is being purchased and (or) other documents confirming the purpose of the purchase and the amount.

The Resolution also amends the instructions for completing reports on currency payments and (or) transfers made at the request (in favour) of resident clients and reports on foreign currency cash payments and (or) transfers made by individuals.

#### **The Resolution entered into force on 11 May 2015.**

#### ***Government Resolution № 210 dated 9 April 2015 On the Introduction of Amendments and Additions to Government Resolution № 436 dated 8 May 2003 "On Issues related to the Realisation of the Law On Investments" and № 1175 dated 4 November 2014 "On the Approval of Rules for providing Investment Subsidies"***

The Resolution has entered a number of amendments to the investment project model contract, which deals with investments and provides investment preferences, and also amended the rules for providing investment subsidies.

The Rules and model contract have been supplemented with provisions regarding participation of the state and (or) quasi-public entities as part of a Kazakhstan legal entity making investments (“Investor”) in Kazakhstan, in particular:

- the possibility of the state and (or) a quasi-public entity acting as an investor founder and (or) participant, with participation interest not exceeding 25%
- the possibility of providing investment subsidies to a legal entity recognised as a quasi-public entity in accordance with Kazakhstan budget legislation (provided other requirements of the Rules are met)
- the addition of a list of Investor obligations regarding the withdrawal of the state and (or) quasi-public entity from the list of Investor founders and (or) participants for five years from the investment contract registration date
- the definition of a method for confirming execution of the above obligation
- the definition of measures applied against an Investor in the event it does not execute its obligations, down to the early termination of an investment contract

**The Resolution entered into force on 4 May 2015.**

***Law № 308-V dated 22 April 2015 On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding Restrictions in the state’s Participation in Entrepreneurial Activities***

The above Law made amendments and additions to a number of normative legal acts, including:

- 1) the General and Special Parts of the Civil Code
- 2) the Civil Procedural Code
- 3) the Land Code
- 4) the Law On the State Registration of Legal Entities and Registration of Branches and Representative Offices
- 5) the Law On Joint Stock Companies
- 6) the Law On State Property
- 7) the Law on Competition

Some of the most significant additions include:

- a ban on subsidiaries acquiring parent company shares, and a limit on financial organisations acquiring parent organisation shares
- the lease of movable property that is the subject of a pledge
- disputes related to privately-owned land may now be resolved through mediation
- a procedure for a general meeting of shareholders to exchange listed shares of one type for shares of another type
- the introduction of the obligation for public companies to create an internal audit department
- a ban for public companies on the mutual ownership of 10% or more of shares in circulation
- the addition of information for publication on a joint stock company’s corporate website
- additional grounds for the state’s participation in entrepreneurial activities and the creation of state enterprises
- a ban on the creation of and participation in legal entities that are more than 50% state owned, and affiliates treated as small businesses
- the liquidation of legal entities in a case of a failure to privatise a state enterprise as a property portfolio, the shares of joint stock companies and interest in the equity of limited liability

partnerships (one hundred per cent owned by the state) within two years from the date of relevant resolution

- the ability to appeal to court for rehabilitation in the event of tax and customs payment arrears, taxes and late payment interest
- an addition to the order of priority of bankrupt assets
- the anti-monopoly authorities should conduct annual commodity market competition analyses

#### **The Law entered into force on 5 May 2015.**

#### ***Order of the Minister for Energy № 216 dated 18 March 2015 On the Approval of Rules for issuing Greenhouse Gas Emission Quotas***

Rules for issuing greenhouse gas emission quotas were developed in accordance with the Ecological Code. Greenhouse gas emission quotas are used to regulate the volume of greenhouse gas emissions per user of natural resources over the course of the national plan for the allocation of greenhouse gas emission quotas (the “National Plan”).

Greenhouse gas emission quotas are set for an entire site operating period and within the National Plan and recorded in an emissions certificate from the authorised body (“Certificate”).

To receive greenhouse gas emission quotas and trade in carbon units, users of natural resources should submit an application with the authorised body together with supporting documents, at least three months before a new site is due to be commissioned. The authorised body, on the other hand, should issue a Certificate within three months from the day documents are received. The Rules also provide grounds for a refusal to issue certificates, and to abolish and suspend quotas.

#### **The Order entered into force on 6 June 2015.**

#### ***Law № 311-V dated 27 April 2015 On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Insurance and Islamic Financing***

The amendments have led to improvements in legislative acts governing insurance, compensation and Islamic financing, in particular:

- annual increases in amounts due directly to support individuals (injury or death compensation, compensation for the death of a victim, according to a permanent alimony agreement and others) in proportion to average inflation forecasts
- the definition of Islamic insurance, the procedure for concluding Islamic insurance contracts
- an upper limit in amounts payable by employers as compensation for harming employee health
- an addition to the procedure for Islamic banks to carry out banking transactions, including transfers and loans
- the procedure for the simultaneous transfer of assets and liabilities between parent and subsidiary banks that have undergone restructuring
- the procedure for registering amendments and additions to pledge cession agreements (including agreements for the simultaneous transfer of assets and liabilities)
- the possibility of pledge holders exclusively registering the creation of and changes to pledges, and without the pledger’s consent in the event of a cession of rights (claims) under pledge cession agreements for immovable property
- the introduction of a term “Islamic leasing”
- the introduction of the term “Islamic insurance (reinsurance) organisation” and a definition of the characteristics and principles of Islamic insurance activities

The Law allows companies to provide obligatory insurance provided they have no major individual or insurance holding company participant in which 50% or more of shares directly or indirectly belong to or have been transferred to the trust management of the state or national holding company. Injury, death and burial compensation payments have been significantly increased.

The Law has also amended the laws On Obligatory Employee Insurance against Work Accidents, On the Obligatory Civil and Legal Liability of Audit Organisations, On Carrier's Obligatory Civil and Legal Liability Insurance and others.

**The Law entered into force on 10 May 2015.**

***Law of the Republic of Kazakhstan dated 5 May 2015 № 312-V On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding Natural Monopolies and Regulated Markets***

The above law has amended and supplemented a number of terms used in anti-monopoly regulation.

Among the significant changes is that from now "economic concentration" is defined as an acquisition of over 50% of the voting shares (share capital or equity interest) of a market entity by an entity's (group of entities'), if before such acquisition, the entity (group of entities) did not hold shares (share capital or equity interest) in the market entity therein or held 50% or less of the voting shares (share capital or equity interest) of the market entity therein. This requirement does not apply to founders establishing a legal entity.

The Law also amended the period of consideration of requests for a consent on economic concentration, added obligations for natural monopolies, changed the procedure for approving natural monopolies' investment programmes (projects) and analysing information on its execution, and others.

**With the exception of specific provisions, the Law entered into force on 18 May 2015.**

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