

# Legal Alert

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## **Kazakhstan Government Resolution № 70 dated 18 February 2015 On the Approval of Rules for organising an Investor “One-Stop-Shop”**

Government Resolution № 70 dated 18 February 2015 has approved Rules to set up an Investor “One-Stop-Shop” helping investors realise priority investments projects and implement a series of informative, consulting and organisational measures to aid investors in their investment activities (hereinafter- Rules).

As part of its investment project support, the authorised body will consult investors on all state services available and on how to best realise their investment projects.

Investors should file applications for state services and any required documents with the authorised body in a specially designated location. Applications can be in Russian or Kazakh, at an applicant’s discretion. The authorised body then sends the investors’ documents to a public service centre or state service provider and supports the investment project until the state services are provided.

Investors can check the status of their particular state services online. If service providers fail to meet response deadlines, the authorised body sends written and (or) electronic notification of the same to the service provider requesting it to correct any infringements.

The Rules also stipulate the following additional investor consulting services:

- at the authorised body’s (written or electronic) request, service providers should engage a specialist within one day to consult investors on state services at a specially designated location;
- if an issue is particularly complex and requires additional work, service providers should provide a written or email response within one day.

**The resolution entered into force on 16 March 2015.**

## **File on the Draft Subsoil and Subsoil Use Code as at February 2015**

A decision to codify the Law *On the Subsoil and Use of the Subsoil* dated 24 June 2010 was taken in accordance with presidential instructions to simplify the procedure for granting subsoil use rights in accordance with international norms, and prevent speculation and the ineffective use of the subsoil.

The prime objective of codifying subsoil and subsoil use legislation is to systemise legislation, improve and optimise interaction between the state authorities and subsoil users, attracting investment, implementing new legal institutions and instruments, and establishing the priority of ecological and subsoil operating safety and other related work.

It is understood that the Code will consist of a general part regulating general subsoil issues and a special part governing specific subsoil use or related operations, and also specific mineral resources. The Code’s adoption will bring about changes to a number of normative legal acts governing associated public relations.

The Code will introduce a number of new subsoil-related principles such as the “transparency of the activities of state bodies and accessibility to information”, which will be achieved by making all necessary information available through Internet resources. Furthermore, according to the new principle of “ensuring the rational, comprehensive and safe use of the subsoil”, subsoil users will determine the economic viability of producing any mineral resource themselves based on laws and market conditions, eliminating the requirement to receive recommendations, approvals and agreement from the relevant state bodies, committees or commissions, significantly reducing bureaucracy.

The state bodies will be given specific timeframes and cases to adopt decisions or act. At the same time, the authorities’ failure to observe deadlines will signify their consent or approval.

The main innovations in the Code are:

- 1) the introduction of territory (subsoil site) grading, according to investment potential, as promising, insufficiently studied and sites with unrevealed investment potential;
- 2) the division of territory into blocks, with the maximum quantity in a single contract or license limited;

- 3) the introduction of a new type of subsoil use - "preliminary exploration", which is work carried out to search for and assess the potential of subsoil sites;
- 4) the introduction of the term "retention status", which enables the user to retain subsoil use rights in relation to a specific site if it has a valid reason for not performing production operations over a specific period of time;
- 5) the regulation of prospecting production by introducing simplified and accelerated licensing procedures;
- 6) the introduction of the licensing of subsoil use rights in relation to solid mineral resources, common mineral resources, therapeutic mud, underground water, the construction and (or) operation of underground structures (spaces), and also the extraction of mineral elements from state-owned industrial formations and industrial mineral formations;
- 7) a change in the procedure for providing subsoil use rights, including those awarded based on a tender (auction) and on a "first come first served" basis provided applicants comply with an approved formula and accounting treatment (points system) and the provision of subsoil use rights will be dependent on mineral resource types, the purpose of the subsoil site, subsoil use entities and others;
- 8) improvements to project documentation used in subsoil use operations, changes in preparation and coordination procedures, including the preparation of project documents in accordance with Kazakhstan and generally recognised foreign industry association and institution standards, and their approval exclusively by subsoil users;
- 9) the gradual transition to international standards for calculating reserves such as CRIRSCO or JORC for solid mineral resources, and SPE-PRMS for hydrocarbons;
- 10) the introduction of restrictions in the granting of subsoil use rights and the exercising of the state's priority right through national companies, improvements to Departmental Commission competency by introducing representatives from national oil and gas, atomic and mining companies to it, having at the same time ruled out their ability to acquire subsoil use rights and (or) associated facilities disposed of by the entities in question;
- 11) the opportunity for foreign and domestic investors to transfer subsoil use or licensing disputes for resolution to international commercial arbitration or arbitration in Kazakhstan;
- 12) the replacement of the requirement to acquire permission from the competent authority or local executive body for the oblast, city of national importance or capital city to pledge subsoil use rights or a related facility, with the notification procedure;
- 13) the classification of the terms "industrial formation" and "industrial mineral formation", and the regulation of a procedure for extracting mineral components from the same;
- 14) the implementation of mechanisms to ensure open access to geological information for all potential investors;
- 15) the regulation of the right of continuous and free access to land plots;
- 16) the annulment of the state regulation of the procurement process for subsoil use goods, work and services and also local content requirements;
- 17) the introduction of norms regulating subsoil use operations in relation to non-traditional mineral resources (shale gas and oil, coal bed methane), and associated solid mineral resource production;
- 18) a revision of state tax policy to take into account mineral resource types, field specifics and other significant characteristics of subsoil use work;
- 19) the introduction of measures to stimulate commodity companies' entry onto the domestic stock exchange by simplifying the procedure for issuing permits to dispose of their securities, and other measures used to increase stock exchange attractiveness for commodity market investors.

**The draft is currently in the development stage**

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## **Kazakhstan National Chamber of Entrepreneurs Opinion № 2403 dated 5 March 2015 on Draft Laws *On Payments and Payment Systems* and *On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Regarding Payments and Payment Systems***

The National Chamber of Entrepreneurs (the “Chamber”) has provided comments on and proposals for the draft laws *On Payments and Payment Systems* and *On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Regarding Payments and Payment Systems*.

According to the Chamber, the electronic payments’ section of the Draft Law *On Payments and Payment Systems* requires additional work, in particular with respect to the proposal to create a single electronic cash operator system and to have banks regulate payments using electronic cash and mobile operators.

The Chamber believes it would be unpractical to remove payment orders/demands from the list of means of payment. It also believes that overdue loans of KZT 70,000 – 200,000, which had been previously written off by payment order/demands against debtor accounts and closed within 1-3 months, will be taken to court and the debtor made subject to all court legal costs and private court bailiff expenses, resulting in an increased burden on the courts.

It also suggests exclusion of National Bank’s responsibility for the binding and integrated list of commission for payment services and for setting maximum commission as it reduces the competitiveness of banks and organisations performing specific banking operations.

The Chamber also believes that having banks and organisations performing specific banking operations, or payment organisations that have entered into agency agreements to provide payment services being liable for the actions of their payment agents and payment subagents is contradictory as payment agents are regarded as independently operating legal entities.

The Chamber has also made corrections of an editorial nature.

**The expert opinion is dated 5 March 2015.**

## **Law № 292-V dated 12 March 2015 ratifying the Treaty between the Governments of Kazakhstan and Macedonia *On the Avoidance of Double Taxation and the Prevention of the Evasion of Income Taxes***

The treaty extends to all taxes recoverable from total income or certain elements of income, including taxes on income from the disposal of movable or immovable property, taxes on wages or salaries payable by companies. The taxes covered are:

- 1) in Kazakhstan:
  - corporate income tax;
  - individual income tax;
- 2) in Macedonia:
  - income tax from individuals;
  - profit tax.

**The Law entered into force on 12 March 2015.**

## **Resolution of the Board of the Kazakhstan National Bank № 243 dated 24 December 2014 On the Approval of Audit Firm Qualifications to list Financial Instruments on the Almaty Regional Financial Centre Special Trading Floor**

The new audit firm qualifications to list financial instruments on the Almaty regional financial centre special trading floor (“Qualifications”) have been divided into two groups:

- 1) for the audit of the financial statements and related information of originators and issuers, including the issuers of depositary receipt underlying assets whose securities are due to be listed or have been listed on the financial centre special trading floor;
- 2) for the audit of the financial statements and related information of issuers (including depositary receipt underlying assets) whose securities are due to be listed or have been listed on the financial centre special trading floor in the second category “shares” (a depositary base asset and its issuer meet second category requirements), in the “other debt securities” and “buffer category” categories of the “debt securities” sector, in the “investment fund securities” sector and “Islamic securities” sector.

Even though the Qualifications for both categories have more or less remained unchanged, the following points have been added:

- for resident and non-resident legal entities – an opinion of a professional audit firm confirming “excellent” compliance with international audit standards and the International Federation of Accountants’ Code of Etiquette;
- a document confirming a practising specialist’s status in accordance with legislation of the country of origin of the relevant certificate (Associate Chartered Accountant (ACA), Chartered Institute of Management Accountants (CIMA), Association of Chartered Certified Accountants (ACCA), Certified Public Accountant (CPA)) and (or) license, or the rules of the organisation that issued a certificate and (or) license.

The new Qualifications have abolished the requirement for a document (certificate or letter) confirming an audit firm’s membership of an international accounting and (or) audit network whose members audit the financial statements of the issuers of financial instruments circulating on at least one of the stock exchanges that are full members of the World Federation of Exchanges at the moment an application is made.

Furthermore, according to the new Qualifications, the only requirement for audit firms preparing audit reports on financial statements in relation to non-residents’ securities is for at least one foreign stock exchange that is a member of the World Federation of Exchanges or the Securities and Exchange Commission to accept their audit reports, or if the audit firm in question is accredited with the Auditing Practices Board in Great Britain.

The Qualifications extend to relations that arose after 1 January 2015, while audit firms operating according to the Qualifications should ensure they do so within one month from the date the Qualifications enter into force.

**The Resolution enters into force on 3 April 2015.**

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