



YEGEUBAYEV
&
PARTNERS



SUBSOIL USE REGULATION

KAZAKHSTAN



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Evolution of Subsoil Legislation

- I. *Law On Oil* dated 1995. **Cancelled in 2010.**
- II. *Law On Subsoil* dated 1996 Was covering all types of natural resources. **Cancelled in 2010.**
- III. *Law On Production Sharing Agreements* dated 2005 covering rights for offshore oil operations according to PSA in the Caspian and Aral seas (only oil and only sea). **Cancelled in 2008.**
- IV. *Law On Subsoil and Subsoil Use Law* dated 2010. **Cancelled in June 2018.**
- V. **Code On Subsoil and Subsoil Use** dated 27 December 2017.

No law on gas. Gas is within the definition of «hydrocarbon»

History / Programs

- * State program on development of the Kazakhstan's sector in the Caspian Sea 2003
- * Program on Development of the Gas Industry 2004-2010
- * Program on Development of Uranium Industry in 2003- 2015
- * Program on conservation of uranium producing enterprises and liquidation of the effects from uranium extraction for 2001-2010

History / Legal enactments

- * Rules for development of oil and gas fields dated 1996
- * Rules on granting subsoil use rights dated 2000
- * Rules on measuring and weighing oil extracted on the contract territory produced by the contractor dated 2006
- * Instruction on classification of reserves of the fields, perspective and anticipated resources of oil and natural hydrocarbon gas dated 2006
- * Instruction on issue of permits for gas flaring dated 2006

Ownership of oil

- * Under the Constitution subsoil and natural resources belong to the state.
- * Oil extracted from subsoil could either belong to the State or to a private person depending on the terms of the subsoil use contract

History / Contractual system

- Between 1999 and 2018 Kazakhstan had only contractual system for granting subsoil use rights.
- Such contract was concluded by the authorised competent authority as defined by the Government (Ministry of Energy)
- NOC Kazmunaigas had the right for at least 50% in all PSAs entered into by the Republic of Kazakhstan
- In 2008 Kazakhstan decided to refuse from all new PSAs.

THE «CODE»

SUBSOIL AND SUBSOIL USE CODE DATED 27 / 12 / 2017

GENERAL PROVISIONS

as amended on

- 24 May 2018 and
- 30 December 2019

Main Sections of the Code

10 Sections, 35 Chapters, 278 Articles

I. General provisions

II. Use of Subsoil

III. Safe Use of Subsoil

IV. State Regulation in the Subsoil
Use Area

V. Disputes, Liability &
International Cooperation of
Kazakhstan

VI. Geological Study of Subsoil

VII. Exploration and Production of
the Hydrocarbons

VIII. Production of Uranium

IX. Exploration and Production of
Solid Minerals

X. Use of Space of the Subsoil,
Gems Digging, Final and
Transitional Provisions

I. General Provisions

1. Constitution, the Code, other legal enactments constitute subsoil use legislation.
2. International agreements, if ratified by Kazakhstan prevail over the Code provisions.
3. Code prevails over the provisions of other legal enactments.
4. Whats not regulated by the Code shall be regulated by the civil legislation

I. General / Principles

1. Rational regulation of the state fund of the subsoil
2. Securing environmental safety during subsoil use
3. Availability of information in the subsoil use area
4. Subsoil use is on paying basis
5. Good faith of subsoil users
6. Stability of Subsoil Use Terms

Principle of Rational Management

Rational management of the state fund or the subsoil use is secured by granting subsoil use rights for the purposes of economic growth of Kazakhstan and wealth of the society.

Principle of Environmental Safety

Subsoil use must be conducted by environmentally safe mechanisms.

Measures should be taken to prevent pollution of the subsoil and reduction of the harmful impact on the environment.

Principle of Information Availability

Open access is given by the state to the following data:

1. Information on auctions that grant subsoil use rights, terms and results thereof ;
2. Decisions by the state bodies on granting and terminating subsoil use rights;
3. Information on subsoil use right with the types of operations on subsoil use
4. Geological data except for geological data that is recognized confidential in accordance with the Code or legislation on state secrets

Data is open to the interested persons free of charge.

Principle of Paying Basis

Subsoil use right shall be onerous (paid for).

Payment shall be made through taxes and other
mandatory payments to the budget in accordance
with tax legislation.

Principle of Good Faith

It is assumed that subsoil users shall have good faith when performing their obligations or executing their rights.

Principle of Stability

UNDEFINED BY THE CODE...

GENERAL PROVISIONS

What is subsoil?

The Code regulates the full the following types of resources :

1. Mineral resources;
2. Technogenic mineral formations;
3. Spaces of the subsoil.

According to the Constitution **all of the subsoil is owned by the state**. State may grant subsoil use rights on the basis and on terms specified by the Code.

Once extracted the mineral resource belongs to the subsoil user.

All actions by any persons that breach state ownership right with regards to subsoil are illegal (void.)

Types of Mineral Resources

1. Underground waters

2. Hydrocarbons:

- (i) crude oil
- (ii) crude gas
- (iii) methane
- (iv) slate gas
- (v) non-hydrocarbon gas
- (vi) solid bitumen

3. Solid mineral resources:

- (i) ore reserves such as ferrous
- (ii) non-ferrous metals,
- (iii) radioactive metals
- (iv) rare earth elements
- (v) non-ore (marble, granite, clay, salt, etc.)

Technogenic Mineral Formations

- Waste from mining, processing (chemical, metallurgical) and energy (heat or electricity) production when such waste contains (i) mineral resources or (ii) elements
- Formations located within the subsoil land plot shall belong to such land plot. Formations produced by chemical, metallurgical or energy productions outside of the plot shall belong to such enterprises.
- Ownership right to such formations shall belong to the subsoil user during the period of subsoil use right.
- Formations that are left after the subsoil use right is terminated shall become part of the subsoil [i.e. passes back to the State].

Formations owned by the state shall have the same legal status as solid mineral resources.

Mineral Deposits

Deposit is an accumulation of mineral resources that can be used for industrial purposes. Large deposits are:

Mineral Resources	Amount
Oil (mln t)	>100
Natural gas (bln cubic m.)	>50
Gold (t)	>250
Zink (mln t.)	>5
Copper (mln t.)	>5
Lead (mln t)	>5

Spaces in the Subsoil

Space of the subsoil is a 3-D spacial quality of the subsoil which can be used as storage for industrial, scientific or other purposes.

Questions

Additional Research and Critical Thinking

- ❑ Whose pictures do you see on the very first slide and why?
- ❑ What do you think was the source of law for oil contracts concluded before Law *On Oil* dated 1995? Why previous laws were cancelled and evolution of the legislation came to the Subsoil Use Code?
- ❑ Why Kazakhstan refused from production sharing agreements in 2008?
- ❑ How many subsoil use contracts were concluded in Kazakhstan