



Gold rush coming to Kazakhstan?



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I. Introduction

As it is known, Kazakhstan adopted a new Code on Subsoil and Subsoil Use dated 27 December 2017 ("**Code**"), which comes into force on 30 June 2018¹.

The Code will replace the current Law on Subsoil and Subsoil Use dated 24 June 2010 (except for certain provisions).

Among others, the Code introduces such a new type of subsoil use as artisanal mining. Since gaining independence of Kazakhstan, there was no legislative act in the field of subsoil use regulating legal relationships associated with artisanal mining activities.

Under the Code, an individual who has obtained an artisanal mining licence ("**Licence**") will have *"the exclusive right to use a subsoil plot for conducting operations on artisanal mining of precious metals and precious stones at placer deposits and deposits of technogenic nature (dumps and stored wastes of mining production facilities and metallurgy) carried out manually or with the use of mechanization tools and other low-power equipment, including overburden removal works, works on sand and soil washing, as well as other related works"*.

At the same time, such a subsoil user ("**Artisanal Miner**") will be entitled to:

- 1) use means of mechanization tools in the form of (i) 1 truck with a carrying capacity of not more than 10 tons, (ii) drilling equipment, as well as (iii) an excavator and/or (iv) a bulldozer with a bucket capacity of not more than 0.5 m³ belonging to him/her on the right of ownership;
- 2) perform drilling and other earthworks at a depth of no more than 3 meters from the lowest point of the earth's surface of the artisanal mining plot ("**Plot**").

At that, the Miner is allowed to produce not more than 50 kg² of gold per year.

The area of the Plot should be at least 500 m² (0.05 ha) and no more than 5 ha.

For more details about the conditions and contents of the Licence, as well as other information related to artisanal mining see the table in Section II (*Regulation of Artisanal Mining*) of this article below.

II. Regulation of Artisanal Mining

№	Description	
1	Grantor of a Licence	Licencee
	Regional akimat (« Akimat »)	Only Kazakhstan citizens
2	Term of a Licence	
	3 years, with the possibility of a one-time extension for 3 years	
3	Transfer or encumbrance of the subsoil use right (its part) under a Licence	
	Forbidden	
4	Number of Licences	
	One individual may have only one Licence	
5	Signature bonus	
	According to Article 729.2 of the Tax Code ³ , a signature bonus shall be paid by the individual who received the Licence no later than 10 business days from the date of issuance of a Licence at the following rates ⁴ , depending on the area of the territory provided:	

¹ We note there is also another point of view that the Code comes into force on 29 June 2018. We indicated the date which we consider to be more correct from the Law on Legal Acts perspective.

² Average price of 1 kg of gold for 2017 was USD 40,417 (www.goldomania.ru).

³ The Code on Taxes and Other Mandatory Payments to the Budget dated 25 December 2017 ("**Tax Code**").

⁴ The tax rates set out by the Tax Code for artisanal mining territories from 30 to 70 ha are inconsistent with the size

	<ol style="list-style-type: none"> 1) up to 30 ha (0.3 km²) – 9 MCI⁵ (21,645 tenge); 2) from 30 ha to 50 ha (0.3 to 0.5 km²) – 12 MCI (28,860 tenge); 3) from 50 ha to 70 ha (0.5 to 0.7 km²) – 15 MCI (36,075 tenge).
6	The Plot
	<p>The territory identifying the subsoil plot for conducting artisanal mining operations must be a rectangle.</p> <p>If natural features or the boundaries of another subsoil plot do not allow to identify the territory of the Plot in the form of a rectangle, the territory of such a subsoil plot may have the form of a quadrangle, which two opposite sides must be parallel to each other.</p> <p>The area of the Plot should be at least 500 m² (0.05 ha) and no more than 5 ha.</p>
7	Procedure for granting a Licence
	<p>An individual interested in obtaining a Licence submits a written application⁶ ("Application") to the Akimat in the form approved by the Ministry of Investment and Development ("MID"). The Application shall be in Kazakh and Russian.</p> <p>The Application shall contain:</p> <ol style="list-style-type: none"> 1) full name of the applicant, place of residence, information on his/her identity documents; 2) a reference to the territory identifying the Plot, which the applicant requests for use, drawn on a scale with geographic coordinates of the corner points and reference to the total area. <p>The following documents are also attached to the Application (copies of the documents attached to the Application shall be notarized):</p> <ol style="list-style-type: none"> a) copies of documents confirming the information envisaged by paragraph 1) above; b) the artisanal mining plan ("Plan") (see Section 12 below); c) a copy of the document confirming the provision of security for the fulfillment of the obligation to liquidate the consequences of artisanal mining (see Section 13 below); d) a document approved by the applicant and containing a list of the mechanization tools and equipment that are planned to be used at artisanal mining, as well as a description of the types and methods of artisanal mining that are planned to be carried out at the Plot; e) (if applicable) the consent of the land user or private owner of the land plot, as well as the user of the subsoil plot for whose territory the Application is submitted; f) (if applicable) a power of attorney for the individual who submits the Application, if he/she acts on behalf of the applicant. <p>The Akimat considers the Application within 7 business days from the date of its receipt and grants a Licence or refuses to grant it.</p>
8	Refusal to grant a Licence
	<p>The Akimat shall refuse to grant a Licence if one of the following grounds exists ("Refusal"):</p> <ol style="list-style-type: none"> 1) The Application or the documents attached to it do not comply with the requirements

artisanal mining territory set out by Article 269.2 the Code being equal from 0.05 ha (500 m²) to 5 ha. We presume that the lawmaker will rectify this discrepancy later by amending either the Tax Code or the Subsoil Code.

⁵ One monthly calculation index in 2018 is equal to 2,405 tenge ("**MCI**").

⁶ Information on the application submitted shall be placed on the internet resource of the relevant Akimat within 2 business days from the date of submission of the application and shall contain:

- 1) full name of the applicant;
- 2) coordinates of the territory of the Plot, which the applicant requests for use; and
- 3) the date and time of receiving the application.

	<p>envisaged by the Code;</p> <ol style="list-style-type: none"> 2) the documents required by the Code have not been attached to the Application; 3) within 2 years before the submission of the Application, a Licence was revoked from the applicant on the grounds envisaged by the Code; 4) the requested territory or its part refers to a subsoil plot under a Licence granted to another individual or to a territory for which granting a Licence is prohibited by the Code; 5) within 1 year prior to filing the Application, there was termination of a Licence previously granted to the applicant in respect of the requested subsoil plot (its part); 6) the territory of the requested Plot does not meet the requirements for the Plot set out by the Code. <p>The Refusal is made in writing, shall be motivated and issued to the applicant within 7 business days from the date of submission of the Application to the Akimat.</p> <p>The Refusal may be appealed against by the applicant within 10 business days from the date of adopting the decision on the Refusal.</p> <p>The Refusal does not deprive the applicant of the right to re-file the Application.</p>
9	Territory for artisanal mining
	<p>A Licence is granted for territories determined by the Akimats upon obtaining approvals from the relevant (i) Department of Ecology of the Committee for Environmental Regulation and Control of the Ministry of Energy and (ii) the Interregional Department of Kaznedra of the Committee of Geology and Subsoil Use under the MID.</p> <p>Licences are not granted for:</p> <ol style="list-style-type: none"> 1) specially protected natural territories with the status of a legal entity and their protection zones; 2) the territories of lands of curative, recreational and historical-cultural purposes; 3) territories of lands for the needs of space activities, defense and national security; 4) territories of settlements and adjacent territories at a distance of 1,000 m; 5) territories of lands designated for burial grounds, graves and cemeteries, and territories within which underground structures are located that are not associated with exploration and production of minerals; 6) the territory of geological and mineralogical state nature reserves.
10	Contents of a Licence
	<p>In addition to the principal information and conditions specified in Article 31⁷ of the Code, a Licence shall contain the following subsoil use conditions:</p> <ol style="list-style-type: none"> 1) the obligation to pay a signature bonus in the amount and under the procedure set out by the Tax Code; 2) the rights of the Artisanal Miner to: <ol style="list-style-type: none"> (i) use mechanization tools in the form of 1 truck with a carrying capacity of not more than 10 tons, drilling equipment, as well as an excavator and/or bulldozer with a

⁷ A subsoil use licence, depending on its type, specifies:

- 1) the type of a subsoil use licence;
- 2) the name of the state body that granted the licence;
- 3) information about the person to whom the licence was granted (for the Licence – full name and citizenship);
- 4) the number and date of the licence;
- 5) licence conditions: the term of the licence, the boundaries of the subsoil plot and other subsoil use conditions envisaged by the Code.

	<p>bucket capacity in total being not more than 0.5 m³ belonging to him/her on the right of ownership;</p> <p>(ii) perform drilling and other earthworks at a depth of not more than 3 meters from the lowest point on the earth's surface of the Plot;</p> <p>3) when performing artisanal mining for alluvial gold, the Artisanal Miner is allowed to produce not more than 50 kg of gold per calendar year;</p> <p>4) on the Plot, the Artisanal Miners is not entitled to:</p> <p>(i) use excavators and bulldozers on water bodies and water fund lands attributable to the Plot;</p> <p>(ii) use chemical reagents and explosives;</p> <p>(iii) erect and construct capital facilities;</p> <p>(iv) remove from the Plot the soil and the extracted rock mass.</p>
11	Procedure on performance of artisanal mining under a Licence
	<p>The licensee is entitled to conduct artisanal mining of any kinds of precious metals and precious stones according to the list envisaged by the Law on Precious Metals and Precious Stones dated 14 January 2016.</p> <p>While carrying out the artisanal mining, the Artisanal Miner is obliged to:</p> <p>(i) exclude the destruction of the natural topography of the banks and the bottom of basins and rivers which water resources are used for the purpose of artisanal mining;</p> <p>(ii) recultivate the lands that were disturbed during artisanal mining;</p> <p>(iii) comply with the restrictions on the use of mechanization tools envisaged by the Licence conditions.</p> <p>The volume of soil and rock being moved during artisanal mining within the Plot provided is not limited, unless otherwise follows from the requirements of the Code, environmental or industrial safety.</p> <p>When carrying out artisanal mining, the Artisanal Miner is free to use water resources without the need to obtain special permits or licences.</p> <p>In case of using water resources, the Artisanal Miner is obliged to perform water protection measures, as well as to comply with other requirements for the protection of water bodies.</p> <p>On the lands of the water fund and water bodies, artisanal mining is carried out only by manual method.</p>
12	The Plan
	<p>An Artisanal Miner using mechanization tools is entitled to conduct artisanal mining only if he/she has (i) the Plan and (ii) a positive opinion of the state environmental expertise of the Plan.</p> <p>The Plan is developed and approved by the Artisanal Miner. The Plan describes the types, methods and ways of artisanal mining works, their approximate scope and timelines of their performance.</p> <p>The instruction on drawing up the Plan is approved by the MID.</p> <p>The content of the Plan is determined by the Artisanal Miner independently, considering the requirements of environmental safety.</p>
13	Security for the liquidation
	<p>Securing the fulfillment of obligations to liquidate the consequences of artisanal mining is provided in the form of a pledge of a bank deposit or a guarantee issued by a bank being compliant with the requirements of the Code⁸⁹.</p>

⁸ Major requirements to securing liquidation works are set out in Articles 54-57 of the Code.

⁹ Draft standard form of a guarantee is at <https://bestprofi.com/document/1926519963?0> (Rus).

	<p>The total amount of the security is calculated based on the number of hectares comprising the territory of the Plot and the amount of MCI being valid in the year of filing an application for the Licence. The security amount for 1 ha is determined by the Akimat.</p> <p>The security amount may be reduced by the Artisanal Miner in proportion to the number of hectares corresponding to the part of the territory of the Plot returned to the state.</p>
14	Relinquishment of a Plot
	<p>An Artisanal Miner is entitled to relinquish any part of the Plot at any time before the Licence expires.</p> <p>Premature relinquishment of such a Plot in full or in part entails either (i) the termination of the Licence, or (ii) its re-registration, respectively.</p>
15	Reporting for artisanal mining
	<p>Under a Licence the Artisanal Miner is required to submit periodic reports on the precious metals and precious stones produced to the Akimat that granted the Licence under the procedure set out by the Committee of Geology and Subsoil Use under the MID.</p> <p>At that:</p> <ol style="list-style-type: none"> 1) reports are submitted annually for the previous calendar year no later than 30 January of each year; 2) reports for an incomplete calendar year are submitted for the actual period of subsoil use; 3) reports for the last incomplete calendar year of the period of using the subsoil plot are submitted no later than 2 months after the end of the specified period.
16	Liability
	<p>Violation of the terms of a Licence entails the liability of the Artisanal Miner in the form of a penalty or revocation of the Licence.</p> <p>The penalty is charged for violation of the Licence terms in case the Artisanal Miner produced more than 50 kg of gold per a calendar year.</p> <p>The penalty is charged in the amount of 100% of the market value of gold produced in excess of the established limit.</p>
17	Revocation of a Licence
	<p>The Licence shall be revoked by the Akimat if one of the following grounds exists:</p> <ol style="list-style-type: none"> 1) a court decision prohibiting subsoil use activities due to violation of environmental and industrial safety requirements comes into force; 2) in case of failure to pay the signature bonus within the period set out by the tax legislation (see Section 7 above); 3) conducting artisanal mining works without providing security for liquidation of artisanal mining consequences; 4) violation of the Licence terms regarding restrictions for artisanal mining works, use of mechanization tools, prohibition to use chemical reagents, explosives, erection of capital structures, displacement of soil and rock outside the Plot; 5) performance of artisanal mining works without the Plan, when its availability is required by the Code. <p>In the cases envisaged by paragraphs 3) and 4) above, the Akimat shall notify the Artisanal Miner in writing of the violation committed.</p> <p>Within 1 month from the date of receiving the notice on the violation committed, the Artisanal Miner shall (i) rectify the violation and (ii) notify the Akimat in writing thereof enclosing documentary evidence. If the violation is not rectified within the specified time, the Akimat revokes the Licence.</p> <p>Revocation of the Licence is carried out by the Akimat by sending a written notice to the Artisanal</p>

Miner about revocation of the Licence ("**Notice**").

The Licence ceases to be effective 1 month after the date the Artisanal Miner receives the Notice, unless the period of the Licence validity expires before such a date.

The Artisanal Miner shall halt works under the revoked Licence upon expiration of 15 business days from the date of receiving the Notice and proceed to work on the liquidation of artisanal mining consequences.

The Artisanal Miner is entitled to appeal against the lawfulness of revoking the Licence in court within 2 months from the date of receiving the Notice.

In the event of such an appeal, the term of termination of the Licence shall be suspended until the court decision comes into force.

Revocation of the Licence is not allowed if the failure to perform or improper performance of the duties that served as the ground for the revocation of the Licence took place because of force majeure, *i.e.* extraordinary and unavoidable events under the given circumstances.

These circumstances do not include the absence of technical and (or) financial resources, or lack of necessary goods, works or services on the market.