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# Mining

**Kazakhstan**

Yerbolat Yerkebulanov, Baizhan Bekzhanov  
and Almat Daumov  
GRATA International

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# KAZAKHSTAN

## Law and Practice

Contributed by:

Yerbolat Yerkebulanov, Baizhan Bekzhanov and Almat Daumov

GRATA International see p.12



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## 1. Mining Law: General Framework

### 1.1 Main Features of the Mining Industry

According to the latest official statistics, the “mining and quarrying” sector (excluding the production of oil and gas) plays an important role in the Kazakh economy, with a contribution of 4.9% to the country’s GDP based upon the results of 2019.

Kazakhstan’s state balance takes into account mineral reserves for 102 types of mineral raw materials, including 40 types of solid minerals.

If compared with world reserves, Kazakhstan ranks:

- first in terms of total reserves and quality of chrome ores (according to the US Geological Survey, 86% of the world’s reserves of chrome ores are in Kazakhstan and South Africa);
- second in terms of reserves and resources of uranium and silver;
- third for confirmed reserves of lead and proven reserves of manganese ores;
- fourth for confirmed reserves of zinc;
- fifth in terms of proven reserves of iron ore (and in terms of their quality, Kazakhstan ranks third in the world);
- eighth in terms of (i) the quantity of confirmed reserves of tin, with the quality (Syrymbet deposit) being not inferior to the main world producers and (ii) gold reserves (mainly represented by small and medium-sized deposits by the standards of the industry);
- ninth in proven cobalt reserves and confirmed reserves of titanium dioxide; and
- thirteenth in terms of proven nickel reserves and bauxite reserves (the latter being in eighth place in terms of mine production).

From 2000–17, USD79 billion was invested into the mining sector.

### Geological Exploration in Kazakhstan Boosted by the Code on Subsoil and Subsoil Use

By adopting the Code on Subsoil and Subsoil Use dated 27 December 2017 (the “SSU Code”), effective from 29 June 2018, Kazakhstan transferred from a contractual regime to a licensing regime for solid minerals (except for uranium, which remained under a contractual regime). The SSU Code is based on the Western Australian model. The purpose was to boost geological exploration and remove administrative burdens for subsoil users.

These measures allowed Kazakhstan to become “the most attractive jurisdiction in the [Asia] region based on its investment

attractiveness rating” according to the Fraser Institute Annual Survey of Mining Companies 2017, in which Kazakhstan took 24th position, compared with the previous 73rd position.

At present, potential subsoil users may see territories available for subsoil use operations on the state e-map. Only subsoil plots included in the State Subsoil Fund Management Programme (the “Programme”) are available for applicants. (Applicants may also request the authorities to include a relevant prospective territory in the Programme.) The Programme is periodically updated, and the authorities plan to cover all the territory of Kazakhstan by the end of 2022. For the major part of territories, currently state geological surveys are made and after completion of such works, the territories will become accessible for exploration.

If earlier exploration contracts were concluded within 1½ years from the date of winning a tender, under the SSU Code, exploration licences are issued within ten business days under the principle “first come, first served”. (For new territories recently added to the Programme, there is a one-month preliminary period from the application filing commencement date. The lodging of two or more applications for the same block(s) during this period causes an auction between the applicants.)

The SSU Code entitled subsoil users to estimate their reserves under the Committee for Mineral Reserves International Reporting Standards (CRIRSCO)-aligned KAZRC standard, which eases the evaluation of projects by the international community (earlier reserves estimation was made under the State Commission for Reserves (GKZ) standards only).

The National Mineral Resources Data Bank, with a paper-free mode, is planned to become available by July 2021.

Such large foreign mining companies as Glencore, Rio Tinto, Iluka Resources, Yildirim Group, Korea Resources Corporation, Polymetal, Russian Copper Company, Ulmus Fund, Areva Sa, ArcelorMittal and Rusal operate in Kazakhstan.

### 1.2 Legal System and Sources of Mining Law

Kazakhstan has a civil law-based legal system. (Recently the Astana Financial Centre was established, which is entitled to resolve investor disputes based on common law principles.)

The SSU Code is the principal law regulating the mining sector. A number of government decrees and orders of the Minister of Industry and Infrastructural Development specify issues envisaged by the SSU Code in more detail.

Certain issues related to precious metals are governed by the Law on Precious Metals and Precious Stones dated 14 January 2016 (the “Precious Metals Law”).

There are also other legislative acts regulating related issues, including the Tax Code, the Land Code and the Environmental Code.

### 1.3 Ownership of Mineral Resources

According to Article 6 of the Kazakhstan Constitution, the subsoil is owned by the state. Violations of state subsoil ownership are punishable by law. Transactions concluded in violation of state subsoil property are null and void.

Mineral resources extracted by subsoil users are their property. Mining companies are also entitled to possess, use and dispose of technogenic mineral formations created as a result of their activity and located at their subsoil use plots.

Certain restrictions may apply to the export of certain minerals, such as the following.

- Under the Precious Metals Law, the owner of raw minerals containing precious metals (eg, gold) is obliged to propose to the Kazakhstan National Bank (which has the priority right to buy out fine gold) fine gold refined at foreign gold-refining plants. Moreover, a Kazakh subsoil user, before exporting gold from Kazakhstan to a foreign refinery, shall obtain waivers of local refining plants.
- In some cases, the authorities may establish temporary bans (eg, for export of gold).
- In certain cases, exporters shall preliminarily obtain export licences (eg, for the export of natural crude stones, non-ferrous metals, precious metals and precious stones, and diamonds).

### 1.4 Role of the State in Mining Law and Regulations

In the mining sector, the state is represented by the competent authority, currently the Ministry of Industry and Infrastructural Development (MIID), which is authorised to grant and terminate subsoil use rights (SURs) for solid minerals (except for uranium) and carries out control over subsoil users’ compliance with their obligations related to SURs. A SUR means “the opportunity afforded by the SSU Code to use subsoil on a reimbursable basis within the limits of an allocated site for entrepreneurial purposes within a certain term”. The competent authority for uranium is the Ministry of Energy. As SURs for uranium are regulated differently compared with other solid minerals, unless specifically mentioned otherwise, this chapter describes mining issues excluding uranium.

Before 29 June 2018, SURs were granted under subsoil use contracts for the right of exploration, mining, or combined exploration and mining (SUCs). Since 29 June 2018, SURs have been granted under subsoil use licences (SULs), as exploration or mining ones.

It is also worth mentioning:

- the Geology Committee under the Ministry of Ecology, Geology and Natural Resources, which, inter alia, maintains the e-map of areas available for subsoil use operations and provides access to geological information; and
- the state-owned Republican Centre for Geological Information Kazgeoinform LLP, acting as a national operator for the collection, storage, processing and provision of geological information, and which is responsible for maintenance of the National Mineral Resources Data Bank.

### 1.5 Nature of Mineral Rights

As noted in 1.3 **Ownership of Mineral Resources**, to explore or mine, an entity shall have a SUR formalised either by a SUC or a SUL. A SUR is a non-divisible proprietary right, which can be pledged, alienated, etc.

### 1.6 Granting of Mineral Rights

The following authorities grant SURs depending on the category of minerals:

- the MIID grants SURs for solid minerals (except for uranium);
- the Ministry of Energy grants SURs for hydrocarbons and uranium; and
- local executive bodies (ie, akimats of regions, Nur-Sultan, Almaty and Shymkent) grant licences for the mining of commonly occurring minerals and licences for artisanal mining.

### 1.7 Mining: Security of Tenure

#### Features of Exploration Licences in Kazakhstan

Exploration licences for solid minerals are granted for up to six years, with the possibility of an extension for five more years. Their owners have an exclusive right to use the subsoil for the purpose of exploration of solid minerals, including the search for deposits of solid minerals and an appraisal of their resources and reserves for subsequent mining.

No transfer of an exploration licence is permitted within one year after its issuance.

If a deposit is discovered, the subsoil user has an exclusive right to obtain a mining licence (provided the application is filed during the exploration period), if the discovery is confirmed by

a report on the estimation of resources and reserves of solid minerals. No assignment of such exclusive right is permitted.

The territory of an exploration licence may not exceed 200 blocks (each block being approximately 2 km<sup>2</sup>).

Each exploration licence shall contain obligations on the payment of a signature bonus, land use fees and minimum annual mandatory expenditures for exploration works on a progressive scale.

An exploration licence can be revoked by the MIID due to a failure to obtain the MIID's consent in the case of transfer of direct or indirect control over the SUL or a breach of licensing conditions. The subsoil user has one year and three months, respectively, to cure such breaches.

## **Features of Mining Licences**

Mining licences are granted for 25 years, with an unlimited number of extensions. Their owners have an exclusive right for mining (extraction) of solid minerals, the use of subsoil space for the purposes of mining, the deployment of mining and/or mining and processing facilities, the placement of technogenic mineral formations and exploration of the mining site (mining exploration).

An applicant shall submit a package of documents, including a draft plan of mining works and a draft liquidation plan, to the MIID. If the authorities accept the application, the subsoil user is notified about the necessity to obtain necessary approvals for such drafts within one year. After the plan of the mining works and liquidation plan are approved, a mining licence is issued.

Each mining licence shall contain obligations on the payment of a signature bonus, land use fees, minimum annual mandatory expenditures for mining works, the amount of the minimum percentage of local content in works and services procured, and the amounts of the obligations on (i) financing the tuition of Kazakh personnel and (ii) research and development works (for each of (i) and (ii), the amount is equal to 1% of the mining expenses for the previous year and is paid starting from the second year of mining).

A mining licence can be revoked by the MIID due to a failure to obtain the MIID's consent in the case of transfer of direct or indirect control over the SUL or a failure to comply with the obligations regarding the payment of a signature bonus, land use fees or minimum annual mandatory expenditures for mining works. The subsoil user has one year and three months, respectively, to cure such breaches.

In certain cases (eg, force majeure, rehabilitation procedure, temporary non-profitability of mining), holders of mining licences may apply for a retention status for up to five years (with a potential extension for five more years). Such status exempts the subsoil user from the obligation to comply with minimum annual mandatory expenditures for mining works.

If any subsoil user's investment into the processing of solid minerals exceeds the amount equal to 7 million monthly calculation indexes (KZT20,419 million), such subsoil user is entitled to conclude an agreement on the processing of solid minerals, which envisages certain tax, customs and other investment preferences.

Before the commencement of exploration or mining operations, holders of SULs shall provide a security for liquidation works.

If, after the issuance of a SUL, Kazakh laws regulating the mining sphere set out other conditions for SULs, these conditions do not apply to the previously issued SUL. This rule does not apply to changes related to national security, defence, environmental security, health, taxation, customs regulation and competition protection.

## **2. Impact of Environmental Protection and Community Relations on Mining Projects**

### **2.1 Environmental Protection and Licensing of Mining Projects**

The Environmental Code is the major document setting out ecological requirements for subsoil use activities. Besides, specific requirements are set out in the SSU Code, the Water Code, the Unified Rules on Rational and Complex Use of Subsoil at Exploration and Mining of Minerals, etc.

In December 2020, the Senate started considering the draft environmental code (the "Draft Code") and a package of related amendments to other legislative acts to come into force from 1 July 2021 (amendments to the Tax Code – from 1 January 2022). The Draft Code provides for the introduction of one of the oldest principles, called "polluter pays", which is widespread and used throughout the world, especially in OECD countries.

According to the environmental regulations, before the commencement of exploration or mining operations, all subsoil users shall prepare relevant project documents (which shall include an environmental impact assessment (EIA) and contain an "Environmental Protection" section), which are, inter alia, subject to either a state ecological expertise (SSE) or approval of the environmental authorities.

## **Draft Environmental Code Heralds Substantial Change**

The EIA procedure has been drastically changed in the Draft Code. According to the Minister of Ecology, if previously the requirement to undergo an EIA procedure was applicable to about 19,000 enterprises, under the Draft Code, this requirement will apply only to 2,600 enterprises working on objects of “category I”, which activities account for 80% of emissions. Category I includes mining and beneficiation of solid minerals. Category II includes the exploration of solid minerals with the extraction of rock mass and soil movement for the purpose of estimation of solid mineral resources.

Under the environmental legislation, subsoil users must obtain environmental emissions permits. The Draft Code sets out that nature users performing activities on objects of categories I and II shall obtain complex ecological permits (mandatory for objects of category I from 2025) or ecological impact permits.

Transitional provisions of the Draft Code set forth that, in general, all previously obtained environmental emissions permits preserve their force and subsoil users have a certain time before new obligations become due (eg, by 1 February 2021, 31 December 2021 or later).

The Draft Code stimulates implementation of the best available technologies directly linked to complex ecological permits. According to draft amendments to the Tax Code, those subsoil users that have obtained complex ecological permits will be exempted from emission fees. For subsoil users that decided not to obtain complex ecological permits, the amount of emission fees will gradually increase (from 2025, for 50 major polluting entities and from 2028, for other entities of category I).

Besides other environmental obligations, subsoil users shall procure mandatory ecological insurance for their activities.

After the termination of subsoil use operations or a depletion of mineral resources, subsoil users shall immediately proceed to work on the liquidation or conservation of subsoil use objects (eg, mines).

Subsoil users carrying out activities under SUCs shall open a relevant abandonment fund account in any Kazakh bank, which funds may be used upon the MIID’s permission for liquidation works only. If the actual cost of the liquidation works exceeds the amount of the abandonment fund, the subsoil user shall additionally finance such works. Subsoil users that obtained SULs shall provide a security for liquidation works, being a guarantee, pledge of a banking deposit and/or insurance.

## **Liabilities for Subsoil Users**

Liability for breach of environmental obligations is rather strict. According to Article 328 of the Administrative Offences Code, if a subsoil user exceeds the emissions limits set out in its environmental permit or does not have an ecological permit, it might be fined (for large-scale business entities) ten times the fee of environmental emissions for the exceeded volume of emissions. The draft amendments to the above Article provide that from 1 July 2021, the liability will be 100 times the fee of environmental emissions for the exceeded volume of emissions.

Further, the authorities also charge the losses from environmental pollution under the Rules of Economic Calculation of Losses from Environmental Pollution (Government Decree dated 27 June 2007 No 535). For instance, for unlawful use of subsoil, an entity is fined ten times the cost of actually mined minerals or the commercial products manufactured upon the development and primary processing of minerals. For unlawful environmental emissions, besides the tenfold increasing coefficient, multipliers for ecological danger and risk (up to three and up to two, respectively, depending on the territory of pollution and number of ecological breaches for the previous three years) may also apply.

## **2.2 Impact of Environmentally Protected Areas on Mining**

The Law on Specifically Protected Natural Territories (such territories are marked on a separate map included in the Programme) regulates subsoil use operations on such territories as follows:

- geological survey and exploration are permitted upon consent of the environmental authorities; and
- mining of minerals is permitted in exceptional cases upon a resolution of the Kazakh government.

All the above operations shall comply with specific stricter ecological requirements set out by the environmental laws.

In addition, the SSU Code lists areas where subsoil operations are prohibited, such as water fund lands, including lands with underground water deposits; lands designated for the needs of defence and national security; lands occupied by roads, railways and airports; and lands in populated areas.

## **2.3 Impact of Community Relations on Mining Projects**

As noted in 2.1 **Environmental Protection and Licensing of Mining Projects**, before commencement of their activities, subsoil users’ project documents are subject either to the SSE or approval of the environmental authorities.

Before filing an application for obtaining the SSE or approval of the environmental authorities, subsoil users shall, among others, conduct public hearings.

Subsoil users shall preliminarily inform the community where they plan to perform subsoil use activities about the date, time and place of the forthcoming public hearings, as well as the order of access of interested persons to materials related to the environmental impact assessment of the project.

Interested locals, the subsoil user, the design company, local executive bodies and territorial environmental authorities take part in the public hearings.

Results of the hearings are formalised by minutes where the main issues of discussion and differences of opinions of the community and the customer are recorded.

The relevant project document shall reflect commentaries on proposals and remarks of the community expressed at the public hearings.

Those subsoil users that have SUCs shall annually pay certain funds for socio-economic development of the region and the development of its infrastructure to the budget of the local regional authority.

Under the SSU Code, if a requested subsoil use plot for exploration of solid minerals or their mining by an underground method relates totally or partly to the lands of populated areas or adjacent thereto within 1 km, the applicant shall preliminarily conclude an agreement with the local executive and representative authorities on socio-economic support of the local community.

Subsoil users that apply for a retention status in respect of their mining plots are obliged to support workers engaged in works on the mining plots, such as by transfer to another work (another work area), the procurement of training for the acquisition of new specialities (professions) and an upgrade of qualifications.

If a subsoil user applies for investment preferences under an agreement for the processing of solid minerals, it shall undertake, inter alia, the obligation to create and keep workplaces for Kazakh citizens on the mining and/or processing facilities.

## 2.4 Prior and Informed Consultation on Mining Projects

Subsoil users shall consult with the community of the region where they plan to work, as described in **2.3 Impact of Community Relations on Mining Projects**.

## 2.5 Impact of Specially Protected Communities on Mining Projects

There are no specially protected communities, such as aboriginal or indigenous people, in Kazakhstan.

## 2.6 Community Development Agreement for Mining Projects

Please see **2.3 Impact of Community Relations on Mining Projects**.

## 2.7 Good and Bad Examples of Community Relations/Consultation Impacting Mining Projects

Kazakh laws oblige subsoil users to conduct subsoil use operations with strict compliance with environmental requirements and taking note of the local community's position (see **2.1 Environmental Protection and Licensing of Mining Projects** and **2.3 Impact of Community Relations on Mining Projects**). An absolute majority of subsoil users duly perform their operations in accordance with the above requirements, which can be considered as a good example of environmental and community relations around mining projects.

The following case can serve as a bad example. An entity wished to obtain a SUR for the mining of manganese ores with a location of the open mine pit 2 km from a village in the Akmola region. However, the local community was against such operations for fear of worsening the ecological situation in the district and the health of the population. Locals did not want the Kalachi-like case to occur with their village. (In 2013, Kalachi village was infected with sleepy syndrome. People abruptly fell to sleep and did not wake up for several days. The syndrome was attributed to the harm caused by a uranium shaft that operated near the village during the Soviet era.)

The environmental authorities firstly issued the positive conclusion of the SSE but later filed a claim to court to annul their conclusion, stating that the minutes of the public hearings were a sham (the repeated public hearings were conducted without representatives of the local executive body and interested representatives of the community, while, according to the police information, persons listed in the minutes did not live in the community).

Members of the land commission unanimously voted against granting a land plot for mining operations due to the local population's negative position. Based on the conclusion of the land commission, the local executive authority refused to grant a temporary land use right to the subsoil user.

The case has been widely discussed in mass and social media. The court decision dated October 2020 did not uphold the sub-

soil user's claim. It appears the subsoil user will not be able to mine at the plot, unless the case is considered by higher-instance courts that will decide otherwise.

## 3. Impact of Climate Change and Sustainable Development on Mining

### 3.1 Effects

After gaining independence in 1991, Kazakhstan repeatedly reaffirmed its commitment to the ideas of environmental safety and sustainable development of the state and society.

Kazakhstan already suffers reduced crop yields from drought and fires. Flooding related to climate change already hits the country with significant impacts. Climate change is projected to increase temperatures, extreme precipitation events and the frequency and intensity of droughts, with consequences for agriculture and water management.

Kazakhstan ratified the UN Framework Convention on Climate Change (UN FCCC) in 1995, the Kyoto Protocol to the UN FCCC in 2009 and the Paris Agreement to the UN FCCC in 2016.

The state undertook the obligation to reduce emissions by 15% before 2030 compared with the basic level of 1990. As Kazakhstan's emissions in 1990 were equal to 389 million of CO<sub>2</sub>-equivalent, then by 2030 the Republic's emissions should not exceed 330 million tonnes of CO<sub>2</sub>.

Under the Environmental Code, all greenhouse gas (GHG) emitters are divided into two categories, depending on the annual level of their emissions:

- entities with emissions exceeding 20,000 tonnes of CO<sub>2</sub> ("Major Emitters"); and
- entities with emissions from 10,000 to 20,000 tonnes of CO<sub>2</sub>, which are called "subjects of administrative regulation" (SARs).

Major Emitters may not operate without obtaining allowances for GHG emissions from the competent authority. Allowances are initially allocated free of charge based on the National GHG Allowances Allocation Plan.

The Plan for 2018–20 set out limits for 24 Major Emitters in the mining sphere (out of 225 Major Emitters over the Republic), for which 30.6 million tonnes of CO<sub>2</sub> were allocated (out of a total of 485.9 million tonnes of CO<sub>2</sub> over the Republic) (6.2%). The Plan also provides for a reserve of 35 million tonnes of CO<sub>2</sub>.

To increase their allowed emissions level, the Major Emitters may participate in the emissions trading system.

The SARs are not allocated GHG emissions allowances. GHG emissions made by the SARs are controlled by the environmental authority.

The Draft Code in general regulates GHG emitters' activities in the same way as above. It also prescribes that the National GHG Allowances Allocation Plan for 2022–25 shall be approved by 31 December 2021.

The authorities have announced that in the near future they will adopt the Strategy of Low Carbon Development of Kazakhstan until 2050, with further measures on reducing CO<sub>2</sub> emissions.

### 3.2 Climate Change Legislation and Proposals Related to Mining

Please see 3.1 Effects.

### 3.3 Sustainable Development Initiatives Related to Mining

From an ecological point of view, sustainable development is one of the major principles of the environmental legislation of Kazakhstan.

Sustainable development means socio-economic development of Kazakhstan achieved without any breach of ecological sustainability, with ensured ecological safety and ecologically balanced use of natural resources for the purpose of fair satisfaction of the needs of the current and future generations.

Kazakhstan has also joined the UN Sustainable Development Goals (SDGs) Initiative, which is aimed at improving the quality of life of citizens, socio-economic development and the environmental sustainability of participating states. The SDGs consist of 17 objectives to be achieved by 2030, as well as 169 related tasks and 242 indicators.

Kazakhstan provides voluntary reports on its compliance with the SDGs.

## 4. Taxation on Mining and Exploration

### 4.1 Mining and Exploration Duties, Royalties and Taxes

In addition to corporate income tax at the rate of 20% and value added tax at the rate of 12%, the Kazakh tax system has the following taxes applicable to subsoil users carrying out exploration or mining of solid minerals.

- A signature bonus is a one-time fixed fee paid by a subsoil user for obtaining the right to subsoil use in a contract area (subsoil plot) and for expanding a contract area (subsoil plot).
- A mineral extraction tax (MET) is an equivalent of a royalty but has some differences. A subsoil user pays the MET separately for each type of raw material, hydrocarbon, groundwater and therapeutic mud extracted in Kazakhstan.

In 2018, Kazakhstan adopted significant changes in the taxation of mining companies. The excess profit tax, commercial discovery bonus and historical cost payments have been removed from the new Tax Code with legal effect from 1 January 2018.

The MET is based on the physical volume of recovered minerals, whilst taking account of potential losses during that recovery. The Tax Code stipulates different tax rates on specific types of minerals. For example, 5.7% for copper; 5% for gold, silver, platinum and palladium; 0.25% for aluminium; and 6% for nickel.

Kazakhstan's MET is very similar to the "unit-based royalty" and different from the more common "value-based royalties".

Kazakhstan's tax legislation does not distinguish between local and foreign investors.

## 4.2 Tax Incentives for Mining Investors and Projects

The Tax Code provides some measures targeted at attracting investments to Kazakhstan's mining sector and especially in exploration activity. In particular, currently the following tax incentives are available for mining companies:

- an exemption from capital gains tax and dividends tax provided that the subsoil user carried out a deep processing of more than 40% of extracted raw minerals in 2019, 50% in 2020–21 and 70% from 2022;
- expenditures for exploration under one exploration licence/SUC could be deducted against income from one mining licence/SUC; and
- a reduced rate of MET for low-margin fields.

Tax stabilisation is not available and all taxes shall be paid according to the current tax legislation.

## 4.3 Transfer Tax and Capital Gains on the Sale of Mining Projects

The sale of a SUR is subject to 12% VAT. Due to this reason, parties of M&A transactions prefer to use "share deal" structures, since the sale of shares in local companies (for example, holders of SURs) is exempted from VAT.

Kazakhstan applies an extraterritorial capital gains tax regime; ie, even if the subject of a transaction is a non-resident (a parent company of a Kazakhstani subsoil user) and the parties of a transaction (seller and buyer) are non-residents, the capital gain derived from the sale of shares of such non-resident is subject to Kazakh capital gains tax at the rate of 15%, or 20% in certain cases. Meanwhile, tax legislation provides exemptions from capital gains tax; for example, in the case of sale of subsoil users with deep processing (subject to certain conditions), and the open sale of shares listed on local and foreign stock exchanges.

## 5. Mining Investment and Finance

### 5.1 Attracting Investment for Mining

While the government and state-owned companies are generally able to directly finance mining projects, it is the state policy to attract as much private investment to Kazakhstan, including its mining sector, as possible.

For that purpose, Kazakhstan became a party to international and bilateral investment treaties, established the Astana International Financial Centre (where disputes may be resolved under common law principles), provides investment preferences for certain projects, set out a special court procedure for disputes between the authorities and investors, implemented a "single window" mechanism for investors in which they can apply for public services in any region of Kazakhstan, appointed an "Investment Ombudsman", and implemented a 30-day visa-free regime for citizens of about 60 countries (suspended until 1 May 2021 due to the pandemic), among other measures.

Measures to attract investment into the mining sector were implemented with the adoption of the SSU Code, as discussed in other sections of this chapter.

### 5.2 Foreign Investment Restrictions and Approvals in the Exploration and Mining Sectors

There are no restrictions on foreign investment in the exploration and mining sector related to solid minerals (except for uranium), except for artisanal mining licences issued to Kazakh citizens only.

Under the SSU Code, a SUR for uranium is granted to the National Atomic Company Kazatomprom JSC. Such SUR may be further transferred only to a legal entity in which the national company controls directly or indirectly more than 50% of shares.

## 5.3 International Treaties Related to Exploration and Mining

Kazakhstan is a party to several international treaties relevant to the mining industry, including the Partnership and Cooperation Agreement with the European Communities and their Member States dated 23 January 1995 and the Agreement on Cooperation in Study, Exploration and Use of Mineral Resources dated 27 March 1997 with the CIS countries.

Kazakhstan is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and ICSID.

Kazakhstan has also entered into bilateral investment treaties with approximately 50 countries, establishing guarantees for the protection of investment activities. The texts of these treaties may differ in terms of defining an investor, an object of investment, protected rights of an investor and the procedure of investment protection. However, all the treaties stipulate the investor's right to apply for international investment arbitration to protect their rights and investment.

It is also worth noting that Kazakhstan has made decent progress in complying with the requirements of the Extractive Industries Transparency Initiative.

## 5.4 Sources of Finance for Exploration, Development and Mining

Access to financial capital is a very important issue for companies operating in exploration and development.

Besides the use of their own funds, small companies often create joint ventures in which their partner is responsible for a major part of the financing.

Mid-sized and major companies prefer to use loans from shareholders, or from Kazakh or foreign banks (normally against a pledge of their SURs, shares in a subsoil user and/or other assets).

A limited number of companies enter into off-take agreements or raise financing through local or foreign stock exchanges. It is expected that junior miners will play a more active part in raising capital through local stock exchanges.

## 5.5 Role of Domestic and International Securities Market in the Financing of Exploration, Development and Mining

The SSU Code contains the definition of objects linked to SURs ("Objects"), which comprise any form of equity participation (shares, participatory interest, etc), as well as securities that confirm the ownership right or are convertible into any form

of equity participation in (i) a subsoil user or (ii) a legal entity or other organisation that has the opportunity directly and/or indirectly to determine decisions taken by the subsoil user.

Those shares and other securities (including derivative financial instruments, the underlying assets of which are shares) of a subsoil user or its parent company that are circulating on a local or foreign stock exchange are not acknowledged as Objects.

The issuance of Objects on a domestic or an international stock exchange is subject to the MIID's consent. If Objects relate to a SUR for uranium, a government decree shall additionally be obtained.

Furthermore, under the Law on Securities Market, the issuance of shares on a foreign stock exchange requires compliance with a number of requirements (obtaining the National Bank's consent, placement of 20% of issued shares on a local stock exchange, etc).

Finally, if, as a result of the transaction, the acquirer becomes an owner of more than 50% of the shares of a Kazakh entity, and the aggregate balance cost of assets of such Kazakh entity and the acquirer's group of companies exceeds 10 million monthly calculation indexes (KZT29.17 billion for 2021), the transaction is subject to a prior anti-monopoly approval.

## 5.6 Security Over Mining Tenements and Related Assets

Kazakh law allows the provision of a SUR for solid minerals as a pledge. Such pledge shall be registered by the MIID. Some pledge holders also obtain other types of security (such as a guarantee) in addition to a pledge of a SUR.

# 6. Mining: Outlook and Trends

## 6.1 The Mining Sector Two-Year Forecast Impact of the COVID-19 Pandemic on Mining in Kazakhstan

The COVID-19 pandemic affected mining companies in 2020 due to widely implemented quarantine measures. Many subsoil users failed to perform field works. The government tasked the MIID to consider the possibility of deferring contractual and licensing obligations for 2020 to subsequent years without imposing fines. The MIID announced that it was ready to consider applications of holders of SUCs to amend work programmes accordingly.

As noted by a high-rank official at the Kazakhstan Mining Online Conference held in October 2020, about 40 leading mining companies in Kazakhstan had a good chance of coping

with the shocks from the pandemic. In general, it was possible to prevent a sharp decline in production volumes, to preserve jobs and continue the implementation of investment projects “almost in full”. Other speakers also noted that, at the end of the third quarter of 2020, the industry did not show a decline and remained at the level of 2019, which was a positive indicator during the pandemic.

## **Legislative Outlook**

According to the MIID, no revolutionary amendments to the SSU Code are expected in the near future.

By the end of 2022, the authorities plan to finalise the state geological survey and include relevant territories into the Programme, thus almost all the territory of Kazakhstan will be available for exploration activities.

According to officials, before enactment of the SSU Code, expenses for the exploration of 1 km<sup>2</sup> were USD7, while in Australia the same work required USD167, in the USA, USD87 and in Canada, USD203. In 2017, investment expenditure for the mining sector was USD4.9 billion, with only 2.3% spent on exploration.

Adoption of the SSU Code has already resulted in a notable rise in exploration activities. For instance, as of 1 December 2020 (ie, about 2½ years after the SSU Code came into force), the MIID had issued more than 1,000 exploration licences (compared with about 550 available valid SUCs for solid minerals).

Considering that the territory available for exploration will be significantly expanded by the end of 2022, the number of junior companies in the mining sector is expected to increase substantially, with related consequences for the Kazakh economy.

Eventually, with the launch of mass geological exploration in Kazakhstan, McKinsey & Company forecasts the discovery of not less than 15 world-class deposits, as well as new mining provinces.

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## Authors



**Yerbolat Yerkebulanov** is a partner and head of the Subsoil Use Department (Almaty) of GRATA International. He has extensive expertise in advising international clients on issues related to oil and gas, mining, M&A, and EPC contracts, among others. Prior to joining GRATA

International in November 2010, Yerbolat gained experience as a legal counsel in the largest cellular communications operating company in Kazakhstan (2001–06) and in a petroleum company (2006–10). He has undertaken and supervised work for a number of oil and gas, mining and services companies – including the Korean National Oil Corporation (KNOC), Rio Tinto, the North Caspian Operating Company (the operator of Kashagan, the world's largest oil discovery of the last 40 years), Polymetal, NordGold, Sinopec, Baker Hughes, Eurochem, Repsol, Pertamina, ENRC, CGNPC, Mubadala, MOL, JBIC, Tethys, MIE Holding and Severstal – and with regard to companies such as Karachaganak Petroleum Operating B.V. (one of the world's largest gas condensate fields), Maersk and Maten Petroleum.



**Baizhan Bekzhanov** is a partner in the Natural Resources Department of GRATA International. He focuses on energy and natural resources, M&A, labour law and dispute resolution. Baizhan has extensive experience in advising international and domestic clients on issues related to subsoil

use regulation in deals relating to the acquisition of subsoil use assets in Kazakhstan. He has great experience in undertaking and supervising work for mining, oil and gas, and services companies, including CNPC and its subsidiaries, the North Caspian Operating Company (the operator of Kashagan, the world's largest oil discovery of the last 40 years), Sinopec and its subsidiaries, Kazatomprom and its subsidiaries, Severstal, Nord Gold and Polymetal.



**Almat Daumov** is a partner and head of the Natural Resources Department of GRATA International. He focuses on energy and natural resources, M&A, tax law and dispute resolution. For more than 14 years, Almat has advised domestic and multinational corporations and built an

impressive oil and gas, and mining practice. He has extensive experience in undertaking and supervising work for oil and gas, mining and services companies, including the Korean National Oil Corporation (KNOC), the North Caspian Operating Company (the operator of Kashagan, the world's largest oil discovery of the last 40 years), Sinopec, Rosneft, Baker Hughes, Enka, Polyus Gold International, Severstal, Nord Gold and Polymetal.

## **GRATA International**

104, M. Ospanov Str.  
Almaty  
050020  
Kazakhstan

Tel: +7 727 2445 777  
Email: [info@gratanet.com](mailto:info@gratanet.com)  
Web: [www.gratanet.com](http://www.gratanet.com)

