Draft of the new Environmental Code of Republic of Kazakhstan: key points for entrepreneurs

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The Parliament of the Republic of Kazakhstan is currently considering a draft of the new Environmental Code (hereinafter - the '**Draft Code**') developed by the Government of the Republic of Kazakhstan under the instruction of the President of the Republic of Kazakhstan.

The Draft Code significantly differs from the current Environmental Code of the Republic of Kazakhstan. The Draft Code is based on the experience of the countries of the Organisation for Environmental Cooperation and Development (OECD). The Draft Code provides for a fundamental change in the state environmental protection policy.

Here we outline on the key changes proposed by the Draft Code in the area of environmental protection.

Environmental Permits

Today nature users have the *right to choose* between obtaining a comprehensive environmental permit and permit for environmental emissions. However, a comprehensive environmental permit is not popular since it involves the obligatory use of the best available technologies. Enterprises, as you may know, prefer to avoid additional duties, where permitted by law.

The Draft Code provides for the obligatory obtaining of a comprehensive environmental permit for the construction and operation of category I facilities. The category I facilities include activities that have a *significant environmental impact* (for example, exploration and production of hydrocarbons, processing of hydrocarbons, processing of ferrous metals that reaches certain indicators, etc.). A comprehensive environmental permit contains many components that previously were separate permitting procedures.

Operators of category II facilities (i.e., facilities that have a *moderate environmental impact*) shall obtain an environmental impact permit. Environmental impact permit includes environmental conditions for the implementation of activities, including: standards for environmental emissions; limits for waste accumulation, limits for waste disposal (where own landfill is available); waste management program; environmental production control program; environmental action plan for the period of the environmental permit; other environmental protection requirements specified in the opinion on the environmental impact assessment (if any). An environmental impact permit is issued for a period until the change of the applied technologies that require a change in environmental conditions specified in the current permit, but not more than for ten years.

The Draft Code exempts from obtaining environmental permits for operators of category III or IV facilities (i.e., facilities that have *low* and *minimal harmful impact on the environment*, respectively). Operators owning category III facilities are required to submit a declaration of environmental impact (hereinafter - the '**Declaration**') to the local executive authority. The Declaration is submitted before the start of the planned activity, and must also be submitted repeatedly - in the event of a significant change in technological processes, qualitative and quantitative characteristics of emissions, discharges of pollutants and stationary sources, waste. For operators of category IV facilities there is no obligation to submit a Declaration.

Procedure of the Environmental Impact Assessment

An environmental impact assessment (hereinafter - the '**EIA**') procedure has been drastically changed in the Draft Code. During the application of the current laws, a number of shortcomings were

identified in the current EIA procedure, which includes the same mechanisms for activities that have both significant and minor environmental impacts.

The Draft Code provides for:

1) a list of the intended activities, which require an EIA (for example, oil refineries, except for the enterprises producing exclusively lubricants from crude oil, gas refineries, plants for the processing of irradiated nuclear fuel, etc.);

2) a list of activities, which require a screening procedure (for example, coal processing plants (stone and brown) with a capacity of 1 mln or more tons per year, industrial briquetting of coal dust and brown coal, exploration and production of hydrocarbons (except for oil and natural gas extraction for commercial purposes, where the recoverable amount exceeds 500 tons per day in case of oil, and 500,000 m^3 per day in case of gas, etc.). Screening is to identify potential significant environmental impacts of the proposed activity and to determine the need for an EIA for a particular facility. Screening will be performed by the competent environmental protection authority in view of the comments and suggestions of interested state authorities and the public.

The Draft Code requires that prior to conducting research on the possible environmental impacts of the proposed activity, an opinion on the EIA scoping shall be obtained. This procedure allows establishing what information shall be collected and how deeply and in detail it shall be studied during the EIA; what research methods shall be applied; what the procedure is for presenting information in a report on potential impacts. The EIA scoping will enable the initiator of the projected activity and the EIA developers to focus on the study of precisely those impacts that are characteristic of this activity due to its features, as well as the particularities of the place of its implementation. Besides, the procedure for the EIA scoping should contribute to the selection of the most effective research methods. The EIA scoping procedure will be issued by the competent environmental protection authority in view of the comments and suggestions of interested state authorities and the public.

Having received an EIA scoping opinion, the initiator of the planned activity shall ensure the implementation of measures required for the EIA as well as the preparation of a report on possible environmental impacts. The said works are performed by individuals and/or legal entities that have proper license to perform work and services in the area of environmental protection.

The draft report on possible impacts is subject to a quality assessment, public hearings, and then the competent environmental protection authority issues an opinion on the EIA results. The conclusions and conditions contained in the opinion on the EIA results must be taken into account by all state authorities when issuing permits, accepting notices and performing other administrative procedures related to the implementation of the intended activity.

It should be noted that the EIA provisions as well as provisions on strategic environmental assessment were developed in view of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters signed in Aarhus (Denmark) on 25 June 1998, as well as the Convention on Environmental Impact Assessment in a Transboundary Context made in Espoo (Finland) on 25 February 1991.

Changes in the Area of Waste Management

The Draft Code provides for the principles of the state environmental policy in the area of waste management, including the new 'principle of liability of the waste generator'. This principle establishes the responsibility of product manufacturers to ensure the proper management of waste generated during the production of such products throughout the life cycle of waste, from the generation thereof to recovery and/or disposal.

The Draft Code also provides for the option of terminating the status of waste and its transfer to the category of finished products or secondary raw materials. This will affect the waste that will be provided for in the list approved by the competent environmental protection authority.

Besides, the Draft Code provides for an updated system of terms used in the area of waste management. For instance, the Draft Code specifies the concept of 'waste accumulation' which has

replaced the concept of 'temporary storage' provided for in the current legislation. In contrast to the temporary storage of waste, the waste accumulation includes the temporary storage of waste not only at the place of its generation, but also at the place of its collection (for non-hazardous wastes), and at the facility where they will be subject to disposal or recovery actions. Thus, the right to accumulate waste can be used not only by persons, whose activities led to their generation, but also by entities engaged in the collection of non-hazardous wastes, ans those that took waste to their facilities for disposal or recovery.

The Draft Code also provides for the concept of 'waste collection' - activities for the organised reception of waste from individuals and legal entities by specialised organisations in order to further send such waste to recovery or disposal. Persons engaged in waste collection are required to comply with the requirements for separate collection of waste. In particular, pursuant to the Draft Code, separate waste collection is required for the following fractions: 1) 'dry' (paper, cardboard, metal, plastic and glass); 2) 'wet' (food waste, organic staff, etc.).

The following concepts are also fixed and disclosed in the Draft Code: waste 'transportation', 'recovery', 'disposal', 'auxiliary operations in waste management'.

Pursuant to the Draft Code, a notification and licensing procedure is established for business entities providing services in the area of waste management. To perform activities for the collection, sorting and/or transportation of waste, recovery and/or disposal of non-hazardous waste, it is required to submit a notice of the beginning and termination of the activity to the competent environmental protection authority in the procedure established by the Law of the Republic of Kazakhstan 'On Permits and Notifications'.

The licensing procedure is provided for business entities engaged in the processing, treatment, disposal and/or destruction of hazardous waste. This requirement, however, does not apply to business entities that generate waste in the course of their activities and perform the above work in relation to such waste.

Strengthening of Administrative Liability for Environmental Violations

Along with the Draft Code, the draft Law of the Republic of Kazakhstan 'On the Introduction of Amendments to Certain Legislative Acts of the Republic of Kazakhstan regarding Informatisation Issues' was developed (hereinafter – the '**Amendment Law**').

This Amendment Law is expected to significantly change the Code of Kazakhstan 'On Administrative Offence', dated 5 July 2014 (hereinafter – the '**Administrative Code**').

Pursuant to Article 328 of the Administrative Code in its current version, for exceeding the environmental emissions standards or the absence of an environmental permit, if these actions do not contain signs of a criminal offense, large enterprises are fined at the rate of **one thousand percent** of the rate of payment for emissions into the environment for exceeded volume of emissions.

The version amended by the Amendment Law, Article 328 of the Administrative Code reflects the novelties provided for in the Draft Code:

- narrowing of the concept of 'emission standards', in particular, the standards related to waste are excluded from this concept and allocated into separate types of standards ('waste accumulation limits', 'waste disposal limits');
- introduction of the concept of 'technological standards';
- clarification of the standard related to the sulphur disposal (placement) (instead of the 'standard for sulphur disposal in the environment', there are 'limits for the sulphur disposal in open form on sulphur maps', which shall be applied to technical gas sulphur in any aggregate state generated during exploration and/or production of hydrocarbons').

In addition, **the fine is ten times increased**: for exceeding *technological* standards for emissions or discharges, *technological specific* standards for emissions or standards for environmental emissions, *emissions from sources not specified in the environmental permit*, as well as emissions in the absence of a newly issued environmental permit, there is a fine for large business entities in the amount of **ten**

thousand percent of the relevant rate of the payment for a harmful environmental impact for exceeded pollutants.

For the same actions committed by large business entities at the same source of emissions repeatedly within three years after the administrative penalty, the Code provide for a fine for legal entities of **twenty thousand percent** of the relevant rate of payment for harmful environmental impact for exceeded pollutants **with the suspension of the environmental permit** for the operation of the respective source of pollutant emissions into the environment or work site.

Besides, very strict administrative penalties are provided for the anthropogenic environmental impact in the absence of an environmental permit, failure to submit an environmental impact declaration, provision of an unreliable environmental impact declaration, violation of the waste accumulation or disposal limits, violation of the waste accumulation terms.

Thus, if the Amendment Law is adopted in the wording, in which the draft Law was submitted to the Parliament, the administrative liability for administrative violations related to environmental emissions and production and consumption waste management will be seriously tightened.

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We hope this Alert prepared by GRATA Law Firm would be useful for you. If you have any questions or require further comments, please feel free to contact us. We would be pleased to assist you. We are constantly trying to improve the quality of our services, in this regard we would be grateful for your recommendations or suggestions. Besides, if we missed something while working on your project, please let us know.

Regards,

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