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Alert on the amendments to Kazakhstani legislation on the security of subsoil users' relinquishment obligations

Kazakhstani legislation requires subsoil users or persons applying for solid minerals exploration right to provide security ("**Security**") for the obligations on liquidation of consequences of subsoil use operations ("**Relinquishment obligations**").

Effective from 1 March 2021 a number of amendments were introduced into Kazakhstani Subsoil Use Code ("**Subsoil Code**"). One of those amendments empowers Kazakhstani subsoil regulator to establish the procedure for submission and accounting of the Securities.

Based on this right the Minister of Industry and Infrastructural Development of the Republic of Kazakhstan has adopted the Rules on Provision and Accounting of Securities for the Fulfilment of Obligations on Liquidation of Consequences of Subsoil Use Operations Accepted by the State Body (approved by the Order No. 144 dated 31 March 2021, the "**Rules**").

The Rules become effective starting from 11 April 2021 and introduce some novelties to the regulatory regime:

- ▶ Procedure for provision of the Security
- ▶ Regulator's consent for reduction of a Security amount
- ▶ Public access to the information about Securities.

Procedure for provision of the Security

The Rules define the process of provision and accounting of the Securities for the obligations on liquidating the consequences of the subsoil use operations such as:

- ▶ exploration and production of solid minerals
- ▶ production of commonly occurring minerals
- ▶ use of subsoil area for the placement and (or) exploitation of objects of technogenic mineral formations of (resulting from)
 - (a) mining or (b) mining and processing production.

Generally, the Security may be provided in the form of (i) a warranty, (ii) a pledge of a bank account and (or) (iii) an insurance. A combination of the said methods is also possible. All the Securities should be made in accordance with the standard forms approved by the regulator.

The Rules establish the following procedure for provision, amendment or replacement of the Security:

1. A subsoil user or a person applying for solid minerals exploration right submits respective application (cover letter indicating specific information) to the regulator with the Security annexed thereto. The documents must be in Russian and Kazakh.
2. The regulator considers the documents within seven business days after their receipt.
3. The regulator registers the Security and notifies the subsoil user or the applicant within five

business days, unless there are grounds for refusing the security.

The grounds for refusal are as follows:

- ▶ the Security is found improper (e.g. does not comply with the standard form/requirements of the law and (or) the Rules; is not signed by authorized persons or does not have a seal, where necessary);
- ▶ the person applying for solid minerals exploration right misses 40 business days deadline for providing the Security;
- ▶ the application (cover letter with specific information) was not provided with the Security or the documents do not meet the language requirements.

Grammatical or arithmetic errors, typos or other similar errors in the application (cover letter) or the documents are not grounds for refusing in acceptance of the Security. If these defects do not allow to reflect the information about the Security, they may be corrected.

In case of amendments to the Security the subsoil user must update the regulator according to the procedure indicated above.

Necessity of the regulator's consent to reduce a Security amount

The Rules require reduction of the Security amount to be preliminarily consented by the regulator. The consent may be issued in the following cases:

- ▶ The subsoil user returned a part of subsoil plot and duly fulfilled respective relinquishment obligations;
- ▶ The regulator accepts fulfillment of a part of Relinquishment obligations under respective 'progressive' liquidation plan.

Under the Rules, the procedure for obtaining the consent is as follows:

1. The subsoil user submits application (no special form required) for decreasing the Security amount with the necessary documents annexed thereto.
2. The regulator considers the application and the documents within ten business days after their receipt.
3. The regulator notifies the subsoil user about its consent for decreasing the Security amount unless the documents do not comply with the Subsoil Code or the Rules.
4. Upon receiving the consent, the subsoil user provides new or amended Security to the regulator as per the procedure above.

The Rules also oblige the regulator to issue a written confirmation on termination of respective Relinquishment obligations upon request of the subsoil user or issuer of the Security.

Regulation of access to the information about the Security

The regulator provides open access to, *inter alia*, the following information about the Security:

- ▶ the total sum of the Security;
- ▶ type(s) of the Security;
- ▶ the amount and duration of the Security;

► the name of the organization that issued the Security.

Industries

MINING

Locations

KAZAKHSTAN

Key contacts



Maksim Burak

Partner, Head of Subsoil Use
Department (Nur-Sultan)

 Nur-Sultan, Kazakhstan

 +7 701 786 2606

 +7 7172 919 555

 mburak@gratanet.com