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The oil industry is, without a doubt, of huge importance to the economy of Kazakhstan. The management of natural resources and, in particular, subsurface use (mining and oil and gas) are the backbone of Kazakhstan's economy, in which many seek to invest.

Given the huge significance of this industry to the country itself and the specifics of regulating the relations arising from subsurface use, the legal aspects are crucial. It follows from this that, if investors and the state are to select the most promising form of mutual cooperation, they need first of all to select the most advantageous legal framework for the use of natural resources in Kazakhstan.

Furthermore, in wishing to invest in the development of the oil industry or some other sector involving the management of natural resources, investors require guarantees that their rights and interests will be observed.

Taking into account the strategic role this sector plays for the country, investors' activities are constantly being scrupulously observed by the State. This involves constant supervision of the implementation of contracts and checks on compliance with legislation regarding subsurface use. As a result, investors need to keep a close eye on adherence to contractual terms and legislative provisions. The representation of investors in their dealings with the State thus occupies a very special position in the practice of Sayat Zholshy & Partners.

Any mining or oil and gas company needs to consider carefully whether its business plan complies with the requirements of legislation regarding subsurface use.

Anyone wishing to carry out mining or oil and gas production, may receive a licence to carry out the following operations:

- a state-sponsored geological survey;
- prospecting;
- mining/production;
- simultaneous prospecting and production;
- construction and/or operation of underground installations unrelated to prospecting and/or production.

The right to use the subsurface (mine/engage in oil/gas production) arises as a result of:

1. The grant of a right to use the subsurface, via the conclusion of a contract granting such right made directly with the government;

A contract for prospecting, production or simultaneous prospecting and production is concluded on the basis of the results of a tender. The relevant authority – the Ministry of Energy and Natural Resources – holds a tender in relation to a series of subsoil blocks for subsurface rights to exploration, production or simultaneous exploration and production, and also in relation to a series of subsoil blocks where a condition of the

tender is that a national company is awarded a stake in the project.

Depending on the terms of the specific subsurface operations and other circumstances, production sharing, concession, works (paid services) agreements - or a combination of the same - and other contracts may be entered into.

The Program of Works is included as an appendix to the contract and sets out the terms governing prospecting and/or production throughout the entire term of the contract.

In order to obtain a prospecting, production or simultaneous prospecting and production right, the following obligations need to be complied with:

employment of local personnel, taking into account their category and the stage reached in terms of subsurface operations;

engagement of local producers of goods, works and services on a competitive basis as established by the Kazakhstani Government to carry out contract work during subsurface operations;

development and use of advanced technology, new refining processes, main and branch pipelines, construction and joint use of infrastructure and other facilities.

2. In the case of a transfer of a right to subsurface use, one entity becomes vested with a right to subsurface use by another subsurface user.

Such a transfer may or may not be on a commercial basis and there are different ways of achieving this. These include, for example, the sale of an interest (a shareholding) in the subsurface user, or the transfer of such a right as a contribution to the charter capital of the new legal entity to be established.

At the same time, rights to subsurface use may not be transferred without consent from the relevant authority. Such consent is given on a case-by-case basis. The transfer of a right to subsurface use made without consent from the relevant authority is deemed to be invalid from the time it is made.

3. Transfer of the right to subsurface use in the course of normal legal succession: this covers cases where, in the process of the reorganization of a legal entity, the right to subsurface use is passed to a successor company.

It should be noted that a subsurface user operating either on the basis of private ownership of land rights or of temporary land use rights is entitled to mine or produce commonly occurring mineral deposits on that land for its own requirements permanently and for no extra charge.

All other subsurface use operations are carried out on a temporary, chargeable basis. This gives rise to constant competition in the struggle for the use of Kazakhstan's resources.

Given Kazakhstan's untapped resources, the question of carrying out geological surveys of deposits remains key. These surveys can also be extremely profitable. Geological surveys can be carried out by individuals or legal entities with subsurface use rights which include the conduct of state-sponsored geological surveys. Similarly to the case of rights to subsurface use, subsurface use rights including the conduct of state-sponsored geological investigation are granted through the conclusion of a contract agreeing a state-sponsored geological survey with the relevant authority responsible for surveying and exploitation of deposits.

Sayat Zholsky & Partners advise companies from throughout the oil and gas industry and related industries, including prospecting, production, trading, transportation and other service companies within the oil and gas sector.

This practice area covers matters relating to subsurface use in Kazakhstan, from advising on how to obtain subsurface rights and the associated licences and permits to legal support for the prospecting and production process and the protection of clients' rights in the courts and against state authorities.

Issues relating to subsurface use combine a number of different branches of law, including civil, land and administrative law. Thanks to this complexity, the relative

inexperience of the State in these matters, the fact that practice in the application of the law is constantly changing, it is essential that this be treated as a separate practice area. Such an approach appears to be the most attractive and acceptable for our clients, as many of them require an integrated approach and expertise in all relevant branches of law.

Given its experience of issues to do with subsurface use, Sayat Zholshy & Partners will always help its clients find the best solutions. This has been shown on more than once occasion in the past in our successful implementation of numerous unusual and complicated schemes for subsurface use.

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