

Kazakhstan

Olga Chentsova, Natalya Braynina and Valikhan Shaikenov

Aequitas Law Firm

General

- 1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Kazakhstan is ranked ninth with respect to proven reserves of hydrocarbons. As of today the proven reserves of oil in Kazakhstan approximately amount to 5.3 billion tons. Potential reserves of oil only with respect to the fields located in Kazakhstan sector of the Caspian Sea are estimated at more than 17 billion tons.

In 2008, Kazakhstan produced 70.6 million tons of oil and gas condensate, with an increase by 5 per cent as compared with the previous year.

The major oil companies of Kazakhstan are NC Kazmunaigas (KMG), Tengizchevroil, CNPC-AktobeMunaiGas, Karachaganak Petroleum Operating, and others.

KazTransOil JSC (KTO), a subsidiary of KMG, is a monopolist in the pipeline oil transportation market. The company operates oil pipelines with a length over 5,286km.

In 2008, the volume of oil transportation via the system of the main oil pipelines of KTO equalled to 47,467 million tons.

Kazakhstan oil is transported to the main markets of Europe and the Mediterranean via two main pipeline routes: Atyrau-Samara (15.9 million tons per year) and Caspian Pipeline Consortium (Tengiz-Novorossiysk) (32.9 million tons), as well as by tankers and by rail on route Aktau-Baku-Batumi (10 million tons). Oil pipelines Kenkiyak-Atyrau, Alibekmola-Kenkiyak, Northern Buzachi-Karazhanbas and Atasu-Alashankou are being put into operation. The capacities of the Atyrau-Samara oil pipeline, port of Aktau, and of a number of railway collecting and filling terminals have been expanded.

- 2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

The basic volume of the country's energy needs is covered by the traditional sources of energy; 81 per cent of the required volume of electric energy is produced by pulverised-coal-fired power plants and 8.7 per cent is being produced by gas turbine plants.

The share of renewable energy in the total energy balance of the country is about 1.5 per cent, basically due to the use of hydro-energy and power generation. Hydroelectric power stations annually produce 12 per cent of the country's total energy generation. The hydroelectric potential of Kazakhstan is estimated at 170 billion kilowatt-hours (kWh) per year.

Production of electric energy by non-traditional renewable sources of energy is undeveloped and provides just 0.3 per cent of the total production of electric energy in Kazakhstan.

On the whole, the volume of oil processing at domestic refineries

in 2008 was increased as compared with 2007, and amounted to more than 12.3 million tons. However, the expanding production of petroleum products still does not fully satisfy the demands of the domestic market in connection with their export.

- 3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The Strategy for Development of Kazakhstan until 2030, established by the president of Kazakhstan, is a general programme for the development of all industries, including the oil and gas industry.

Kazakhstan has adopted a number of programme documents entirely devoted to the issues of the oil and gas industry (for example, the State Programme for Development of Kazakhstan's Sector of the Caspian Sea) and documents indirectly related to this industry (eg, the Programme for the Environmental Protection of Kazakhstan for 2008 to 2010).

Regulation overview

- 4 Describe the key laws and regulations that make up the general legal framework regulating oil activities.

The framework laws are the 1996 Subsoil Law, which regulates the issues of subsoil use as applicable to all useful minerals, and the 1995 Petroleum Law related only to oil and gas. Both Laws have been repeatedly amended, the most considerable amendments being in 1999 and 2004. The most recent amendments were adopted twice in July 2007 and then in October 2007. The Law on Production Sharing Agreements was enacted in July 2005.

The 2007 Ecological Code and the 2003 Law on State Regulation of Production and Turnover of Certain Types of Petroleum Products are in effect.

A great number of subordinated normative legal acts of various legal authorities are in effect. They regulate certain or specific issues relating to activities in the oil and gas sector.

Kazakhstan ratified the Agreement to Energy Charter and also entered into a number of bilateral treaties that regulate relations in the sphere of oil and protection of capital investments.

- 5 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil activities.

The government is vested with ample powers for the regulation of relations in the oil and gas industry. The government adopts the relevant normative legal acts, regulates the issues of the subsoil use and its protection, development of oil and gas fields; the export of oil, establishes quantitative restrictions on its transportation, determines pricing policy and carries out a number of other regulatory and oversight functions.

The MEMR is the competent authority that acts on behalf of the state in exercising the rights related to the execution, implementa-

tion and termination of contracts for the performance of petroleum operations. It carries out the preparation and organisation of tenders to grant mineral rights; issues permission for their assignment, including their pledging; and performs other regulatory functions in the oil sector.

Other state agencies have certain powers for the regulation of relations related to subsoil use, including in the spheres of environment protection, public health, commercial and industrial policy, employment of the population, taxation, and others.

Some state agencies carry out regulatory and oversight functions in the production and turnover of petroleum products (including the certification body, the antimonopoly body, customs bodies, etc).

KMG is a legal entity with a 100 per cent state shareholding established for the performance of petroleum operations and has wide powers defined by legislation. KMG may act both as a subsoil user (contractor) and as the representative of state interests in contracts with other contractors where the share participation of KMG is provided for.

6 How does your country manage appeals of government regulatory decisions?

The law provides for the possibility of interested parties appealing decisions and actions of the regulatory bodies and contesting the legality of normative legal acts of state agencies and officials.

The protection of rights and interests is carried out by applying to a higher body or court.

7 What standards are employed for oil measurement and oil facility equipment? Are these voluntary or involuntary? Are they established by a government body?

The contractor shall carry out weighing and measuring of oil produced in the contract territory in accordance with a method to be approved by the government. The contractor shall, with the participation of a representative of the metrological service, carry out testing of equipment and devices used for weighing and measuring oil.

As to oil equipment, it has been established that it must conform to the requirements of the legislation on technical regulation, including both legislative acts and subordinate acts.

Certain types of petroleum equipment (eg, oil-field equipment, drilling machinery, oil and gas-trunk pipelines equipment) shall be subject to obligatory additional certification to comply with the obligatory requirements of a standard or other normative document that provides for health and safety, the property of individuals and the environment.

8 What government body maintains oil production, export and import statistics?

The Committee of Customs Control of the Ministry of Finance maintains statistics in the sphere of foreign trade, including import and export of petroleum products.

The Tax Committee of the Ministry of Finance keeps a unified database related to the production and turnover of certain types of petroleum product.

The MEMR monitors the production, transportation, and processing of hydrocarbons and sales of petroleum products.

Natural resources

9 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

In accordance with the Constitution, the subsoil, including useful minerals, among them oil, are the property of the state.

Oil extracted to surface, and oil returned to subsoil for storage, may be both in the state and private ownership, which is specifically determined in a subsoil use contract.

The legislation admits the existence of both private and state ownership of land. Land use is an independent type of natural resource use, different from subsoil use; however, these rights are inseparable.

The execution of a subsoil-use contract is a ground for immediate registration of a land plot (as a rule under the lease terms) by local executive bodies.

Granting of land plots which are in the ownership or land use of third parties is carried out in accordance with the rules established by land legislation.

10 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Oil can be explored for and produced both onshore and offshore. The legislation establishes a tighter legal regime for conducting petroleum operations offshore than onshore.

The subsoil use on certain territories is fully prohibited due to ecological legislation, land legislation, etc. For example, it is prohibited to carry out subsoil use on the territories of national parks, conservation areas, military firing grounds, etc.

The government can introduce restrictions on subsoil use in certain areas, and also conservation of fields for the purpose of providing for the national security of the population and the interests of future generations.

Subsoil use in the territories of populated localities, suburban zones, and the aims of industry, transport and communications may be partly or fully prohibited pursuant to a resolution of the government if such use may threaten the lives and health of people, or cause damage to business aims or the environment.

11 What government body regulates oil exploration and production in your country? What is the character of that regulation?

The government and the MEMR, as the competent authority, enjoy the basic powers with regard to the regulation of the exploration for and production of oil.

Since 1999, Kazakhstan has had a contract system of granting mineral rights, which replaced a licence-contract system.

Generally, the right to explore for and produce oil is granted according to the results of an investment programme's tender (open or closed) by the execution of a contract with its winner.

Contracts are executed on the basis of direct negotiations without holding a tender, but only in cases expressly established by legislation.

The following types of contracts are stipulated by legislation for the performance of subsoil use operations: production sharing agreements (PSAs); concession contracts; and service contract agreements and contracts for chargeable provision of services (service contracts).

Combined and other types of contracts are also allowed. In practice, the most frequently concluded contracts are concession contracts; sometimes PSAs are executed.

KMG, authorised to represent the state's interests in contracts for oil exploration and production, occupies a special place in the subsoil use system.

12 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production?

On 1 January 2009, a new Tax Code entered into force. The new Tax Code abandoned the second tax model of a contract (PSA) under which the royalty was not paid and stipulates the payment of royalty

for all subsoil use contracts. In doing so, the Tax Code changed the terminology and provides for the payment of tax on production of useful minerals, which in its essence corresponds to the royalty.

The object of taxation by the tax on production of useful minerals is the physical volume of crude oil produced by the subsoil user for a tax period.

The tax base for the assessment of tax on production of useful minerals is the value of the volume of crude oil produced during a tax period.

The rates of tax on production of useful minerals with respect to crude oil, including gas condensate, are established as fixed amounts and are paid on a sliding scale. Legislation established various scales for 2009, 2010 and 2011. In 2009, the tax on production of useful minerals is paid on a sliding scale as a percentage dependant on the volume of accumulated oil extraction for each calendar year of activity, and at rates from 3 per cent (in production of up to 250,000 tons) up to 18 per cent (in production of over 10 million tons).

13 What is the customary duration of oil leases, concessions or licences?

A contract for exploration is executed for a period of up to six years and may be extended twice (each extra duration period being up to two years), subject to the implementation by a subsoil user of his contractual obligations.

A contract for production is executed for a term of up to 25 years and may be extended by the mutual agreement of the parties.

In fields with recoverable reserves of over 100 million tons of crude oil, a contract for production may be executed for a period up to 45 years. A production contract under the terms of the PSA may be executed for a period up to 45 years in the case of unique reserves.

A contract for the performance of combined exploration and production is executed for a period including the periods of exploration and production, subject to possible extensions.

14 For offshore production, how far seaward does the regulatory regime extend?

The existing regulatory regime of oil production applies to onshore and offshore sites, subject to special offshore requirements.

15 Who may perform exploration and production activities? What criteria and procedures apply in selecting such entities?

Both Kazakhstan and foreign legal entities and individuals, having equal legal competence, may be subsoil users.

An applicant may be debarred from the right to participate in a tender for obtaining a subsoil use right if granting the right to subsoil use to the applicant may entail non-compliance with the requirements to provide for the national security of the country, including in the case of a concentration of rights within the framework of a contract or a concentration of rights to the performance of subsoil use operations, or both.

The right to conduct oil exploration and production is granted according to the results of tenders, the winners of which are determined on the basis of a set of criteria. Special attention is paid to the amount of investments, the obligations undertaken on the employment of Kazakhstan personnel, on purchased goods, work, and services of Kazakhstan origin, and proposals for the development and use of advanced technologies (high-tech), etc.

KMG has a special status and authority in the obtaining and performance of subsoil use. For example, KMG is granted the right to participate in an amount not less than 50 per cent as a contractor in all executed PSAs.

16 What is the legal regime for joint ventures?

As a general rule, legal entities established with the partial or full participation of foreign investors fall under the same legal regime as national legal entities.

Joint ventures may be organised in the form of a consortium of legal entities, which is not itself a legal entity.

17 How does reservoir unitisation apply to domestic and cross-border reservoirs?

If it is established in the course of a field development that a reservoir is also located in the adjacent area, a subsoil user should immediately apply to the MEMR, requesting to expand the contract territory.

If some part of such field is within the contract territory of another subsoil user, the subsoil users must assign their mineral rights in such a way that there is only one subsoil user left or several contractors having the partial subsoil use right on the basis of one contract, or they must enter into a contract for joint exploration and production in the field as a whole.

Failing the above actions, the competent authority may force them to enter into a contract for joint activity in the field as a whole unit in a judicial procedure.

If, in the course of exploration and production, a subsoil user finds out that part of the field it developed is located in territory under the jurisdiction of a neighbouring state, such contractor shall immediately notify the competent authority about it. In case of the absence of relevant international treaties, the competent authority may demand the suspension of activities on the frontier field until an agreement with the relevant state is reached. The effect is that a contract is interrupted until the moment when the competent authority grants permission for the resumption of activities under the contract.

Transportation

18 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The Petroleum Law regulates the issues of transportation of oil, construction and the operation of oil pipelines, including main pipelines. The Law on Petroleum Products Turnover regulates the transportation of certain types of petroleum products: petrol (except for aviation petrol), diesel fuel and mazut. There are a number of subordinate acts of various levels.

The main pipeline may either be owned by the state or privately. Transportation of petroleum products is allowed using specially equipped transport allowed for transportation usage in accordance with the requirements for the transportation of dangerous goods, and operational regulations.

Oil transportation via main pipelines and railway is referred to the sphere of natural monopolies and to a great extent is regulated by the legislation on monopolies.

The Committee of Transport Control of the Ministry of Transport and Communications carries out state control activities on all types of transport, except for air transport.

The MEMR also has powers in the sphere of transportation of oil and petroleum products: it approves the use of the capacity of the main pipelines and railway overpasses based on the principal of equal access to transport for each subsoil user. However, subsoil users that do not have alternative technical possibilities for transportation enjoy a priority right of access to transport systems of a certain type.

19 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

The activities of organisations that render services for the transportation of oil and petroleum products, including activities related to the operation of main oil pipelines, are subject to mandatory licensing.

Activities related to the transportation of oil and petroleum products by motor, marine, river, railway and air transport are also subject to mandatory licensing as the transportation of hazardous goods. The Law on Licensing, as well as other normative legal acts, regulates the procedure for obtaining a relevant licence. A licensee shall meet the qualification requirements for the licensed types of activities in the sphere of the industry; specifically, the licensee must have the required production and technical facilities, licences for special types of work, etc.

Health, safety and environment

20 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation: what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

General requirements

Health care

The entities that perform activities in the oil and gas sector shall ensure the implementation of rules and norms for the safe performance of work, and the performance of measures for the prevention and elimination of accidents, injuries and occupational diseases.

Safety

The legislation establishes a number of requirements for the purpose of providing for the safety of the population and personnel, specifically: the use of machines, equipment and materials complying with the requirements of safety and sanitary norms; and providing employees with work clothes, safety shoes and means of individual protection from the impact of harmful or hazardous production factors, etc.

Environmental protection

The required ecological basis for the performance of operations in the oil and gas sector, including the operation of oil equipment, is a positive conclusion of the state's ecological expert examination of the ecological and economical substantiation of such operations, performed with an obligatory evaluation of the impact of the contemplated activity on the environment (OEIE).

Banks and other financial institutions are prohibited from financing and implementing projects on the performance of transactions in the sphere of subsoil use without a positive opinion of the state ecological expert examination.

Ecological legislation establishes the obligation of enterprises to organise and conduct industrial control to establish the impact of activities on the environment, and prevent and eliminate identified violations of ecological legislation.

Competent state bodies

The authorised body for the supervision over the safe performance of work in industry and mining and the authorised body for sanitary and epidemiological supervision exercise control over compliance with the rules and norms of technical safety and industrial hygiene.

The authorised bodies are: the MEMR, the relevant committees of the Ministry for Emergency Situations; the Committee for Sanitary and Epidemiological Supervision of the Ministry of Health Protection; and the State Labour Inspectorate.

The Committee for Ecological Regulation and Control of the Ministry of Environment Protection exercises control over compliance with the requirements of the ecological legislation.

Special permits and licences

Ecological permits

The main types of activity in the oil and gas sector refer to the special use of natural resources and require the obtaining of an ecological permit, issued by the bodies that have authority in the area of environmental protection.

The following ecological permits are issued: permits for environmental emissions; and combined ecological permits.

All users of natural resources that release emissions into the environment shall obtain a permit for environmental emissions, which represents a set of documents in the established format that contains:

- information on the user of natural resources and on the activity conducted by it;
- the effective period of the permit;
- the terms of use of the natural resources, including established standards for emissions with respect to all its sources;
- a programme of measures for environment protection for the permit's effective period; and
- a programme of industrial ecological control.

The procedure for obtaining such permit and the term of its effect are dependant on the category of the object for which the permit is granted.

A combined ecological permit is a single document certifying the right of a user of natural resources to release environmental emissions subject to the implementation of the best available technologies and compliance with specific technical standards of emissions as established by the ecological legislation.

The government shall establish a list of industrial objects for which it is possible to obtain combined ecological permits and the procedure for their issue. Among the current established industrial objects, there are oil and gas refining plants.

In addition to the information obligatory for emission permits, a combined ecological permit shall contain:

- the economic terms of use of raw materials and energy;
- a waste management system;
- actions and measures for the operation of a facility in situations threatening to environment; and
- deadlines and terms for the implementation of best-available technologies.

A combined ecological permit is effective until the moment when the applied technologies and the terms of use of the natural resources, indicated in a given permit, change.

Mandatory ecological insurance

Subsoil users that perform ecologically dangerous types of activity shall be obliged to insure their property liability in favour of third parties, on which lives, health and property or environmental harm may be inflicted.

Mandatory employers' liability insurance

Organisations engaged in the oil and gas sector shall, in a mandatory manner, insure their civil liability for the infliction of harm on the life and health of employees in the performance of their employment duties.

Responsibility for violation of requirements

Civil, administrative and criminal legislation regulate responsibility for the violation of ecological requirements.

Civil liability

According to the Petroleum Law, a subsoil user is liable for the damage inflicted on the environment as a result of sea pollution irrespective of the existence of guilt.

The legislation also provides for the compensation of harm inflicted on the health of people in connection with the violation of the ecological legislation rules, and legislation on labour safety.

Update and trends

Presently the Kazakhstan Parliament is considering a new draft Law on Subsoil, the adoption of which will entail considerable change of the subsoil use regime in Kazakhstan. The proposed amendments would affect practically all the key issues with respect to the performance of petroleum operations.

Administrative liability

Administrative responsibility is established for administrative violations in the sphere of environmental protection, the use of natural resources and for a violation inflicting harm on the health and safety of the population. The basic punishment for such violations is the imposition of penalties on the guilty party.

Criminal responsibility

Criminal responsibility is established for a number of ecological violations: for ecocide; for marine pollution; for the violation of legislation on the Kazakhstan continental shelf; and for violating the rules on the protection and use of subsoil and others.

- 21** What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Liquid types of fuel, lubricating oils, and petroleum solvents (petroleum products) of domestic and foreign production sold in Kazakhstan are subject to obligatory certification for the purpose of confirmation of their compliance with the established requirements concerning safety factors and quality. This requirement does not apply to gaseous, waxes or solid petroleum products and reference types of fuel.

The Committee for Technical Regulation and Metrology of the Ministry of Industry and Trade controls the compliance of petroleum products with the requirements of standardisation.

The sale of petroleum products subject to certification without certificates entails the imposition of administrative responsibility in the form of penalties.

Labour

- 22** What government standards apply to oil industry labour? How is foreign labour regulated? Are there anti-discrimination requirements? What are the penalties for non-compliance?

All the requirements of the legislation established for Kazakhstani employees are also applicable to foreigners in Kazakhstan. An employer shall obtain a work permit from the state agencies for the employment of foreign experts, with some exceptions. Work permits are issued within the quotas approved each year for the regions of Kazakhstan.

There is a legislative requirement for the obligatory employment of a certain percentage of Kazakhstan employees in the performance of subsoil use.

Kazakhstan has ratified the Convention of International Labour Organisation on Discrimination in the Area of Labour and Occupation.

The Labour Law establishes a prohibition on any type of discrimination in the sphere of labour. Under the Kazakhstan legislation, nobody can be restricted in their labour rights or obtain privileges in exercising them, based on gender, age, race, nationality, language, property status, official capacity, place of residence, relation to religion, beliefs, citizenship, belonging to public associations, or other

circumstances not related to business qualities of an employee, and the results of his labour.

Administrative or criminal liability is stipulated for violation of the above-mentioned requirements of the legislation.

Taxation

- 23** What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The tax regime for subsoil users is established by the new Tax Code, which determines special taxes and payments of subsoil users paid by them in addition to the generally applicable taxes, including corporate income tax, VAT, excise duties (if applicable), rental tax on export, social tax, land tax, property tax, tax on transport vehicles and payment for environment pollution, etc.

Special payments and taxes of subsoil users include:

- special payments of subsoil users:
 - signature bonus;
 - bonus of commercial discovery;
 - payment for compensation of historical costs;
- tax on production of useful minerals; and
- excess profit tax.

The storage, transportation and processing of crude oil shall be subject to taxation under general rules, except for rental tax on the export applicable to exporters of crude oil.

The Tax Committee of the Ministry of Finance is the state agency responsible for the collection of taxes and other obligatory payments to the budget.

Commodity price controls

- 24** Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

The determination of a pricing policy for crude oil and crude oil products is included in the competence of the government. There are no special rules on a mandatory price-setting regime for crude oil and crude oil products.

However, there are special regulations for the prices of commodities (including petroleum products) applicable to market entities that hold a dominant (monopolistic) position on the commodities market, and to the participants of international business operations. The regulation of such prices is carried out pursuant to the decisions of antimonopoly or tax authorities.

Administrative or criminal responsibility is imposed on persons who violate the antimonopoly legislation and the legislation on state control in the application of transfer prices.

Competition, trade and merger control

- 25** What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Agency for the Regulation of Natural Monopolies implements state policy in the area of regulation of activities of natural monopoly entities.

The Committee for the Protection of Competition of the Kazakhstan Ministry of Industry and Trade (the Committee) prevents, restricts and suppresses monopolistic activities, protects competition and consumers' rights, and controls compliance with the antimonopoly legislation in all commodities markets, including the oil sector.

26 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

The antimonopoly legislation determines anti-competitive standards. Competition-related violations may be identified by the Committee, or by a court of arbitration if a dispute is within their jurisdiction.

Pursuant to the established practice, interested parties apply to the Committee with an inquiry as to whether a current or proposed activity complies with the antimonopoly legislation. The opinion of the Committee may be contested in court.

Certain transactions of natural monopoly entities must be agreed with the Antimonopoly Agency, decisions on which will be taken by the indicated agency within a 30-day period. Certain mergers and other changes of control over the activities of entities in the competitive sector of oil and gas require the preliminary written consent of the Committee or its notification in the cases and in the procedure as established by the law.

The approval of such transactions may take from one to, tentatively, four to six months.

International

27 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Since in accordance with the Constitution, international treaties ratified by Kazakhstan have priority over domestic legislation, they represent significant and sometimes the only source of rights for foreign investors and means for their protection. In some cases, international treaties may be the only act that establishes regulation of the relevant issues, for example, the use of transborder fields.

28 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals?

The Kazakhstan legislation contains a rule that restricts the free purchase by both foreign and Kazakhstan investors of interests in oil producing companies or the rights to participate in petroleum contracts, or both. This restriction is expressed in the establishment of the pre-emptive right of the state before the other parties to a given contract or participants of a legal entity holding subsoil use rights, and other entities, to purchase the alienated subsoil use rights and share participation (shareholding) in a legal entity holding subsoil use rights, and also in a legal entity which has the possibility to directly or indirectly determine or influence decisions adopted by the subsoil user if the main activity of the given legal entity is related to subsoil use in Kazakhstan, on terms no worse than those offered by other buyers.

In 2005, a rule was introduced that potentially restricts the possibility of purchase by a foreign company of the right to subsoil use

and shares or participation interests in a Kazakhstan company having a right to perform petroleum operations.

The restriction consists in the establishment of the right of the competent body to refuse to issue permission for the assignment of the subsoil use right or participation interests or shares in a user company if such assignment entails non-compliance with a requirement to ensure national security of the country, including in the case of the concentration of rights within the framework of a contract or the concentration of rights to perform operations in the sphere of subsoil use.

As a result of amendments introduced in 2007, the assignment of rights under contracts is prohibited during the two-year period from the moment when the contracts enter into force.

In connection with the amendments in the civil legislation that occurred in August 2007, a concept of 'strategic object' is introduced and the restriction is established on the disposal (and, accordingly, acquisition) of strategic objects. The encumbrance of strategic objects with the rights of third parties or their alienation is possible only on the basis of a decision of the government on the issue of permission in the procedure as defined by the government. If a strategic object is in private ownership and the owner contemplates selling the object, the government has a preemptive right to purchase the strategic object at a market price. For example, the following are referred to as strategic objects: main oil pipelines and other oil holdings (participation interests, shares) in legal entities, wholly owned strategic objects; and shareholdings (participation interests) of individuals and legal entities who have the possibility to directly or indirectly determine the decisions or exert influence on the decisions to be adopted by the legal entities which own strategic objects.

Also, irrespective of the civil legislation, the subsoil use legislation establishes that the government may determine a list of fields of strategic significance with respect to which only special procedures for amending contracts is established as yet (actually the right of pressure to amend the terms of a contract is established with respect to the subsoil user), and the special procedure for a unilateral modification of the contract by the state.

29 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

The legislation does not contain definite rules for cross-border sales or deliveries of crude oil or petroleum products. The regulation of petroleum products' export is carried out in accordance with the provisions of the customs legislation.

The government is authorised to regulate the export of petroleum products, including the approval (changing) of the rates of excise duties, protective, anti-dumping, and compensation duties, and on oil exports.

Aequitas Law Firm

Olga Chentsova
Natalya Braynina
Valikhan Shaikenov

o.chentsova@aequitas.kz
n.braynina@aequitas.kz
v.shaikenov@aequitas.kz

47/49 Abai Ave, Office 2
Almaty 050000
Kazakhstan

Tel: +7 727 258 16 91 / 92 / 86
Fax: +7 727 267 30 37
www.aequitas.kz

With respect to the export of certain types of petroleum products, the government, from time to time, establishes temporary prohibitions on their export from Kazakhstan in connection with the need to create sufficient supplies of those petroleum products for the needs of the country's economy.

Customs duties are imposed on crude oil exported from the Kazakhstan customs territory. Customs duties are not applicable with respect to:

- export by subsoil users of crude oil produced by them under production sharing agreements (contracts), which were executed with the Kazakhstan government or the competent authority before 1 January 2009 and underwent obligatory tax expert examination, and under subsoil contracts approved by the Kazakhstan president, which provide for the exemption from payment of export customs duties on crude oil; and
- export of crude oil subject to be imposed by rental tax on exported crude oil from 1 January 2009.