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Draft amendments to procurement rules for petroleum companies

Background

According to the *Ministry of Energy (MoE)*, as of January 1st 2020, there are 235 subsoil use contracts (*SUC*) for hydrocarbons, including 54 exploration contracts, 74 production contracts, 96 combined exploration and production contracts, and 11 production sharing agreements. The

majority of subsoil users must procure goods, works, and services (*GWS*) under the Procurement Rules. However, these Rules do not apply to the so-called “stabilized contracts” for the Tengiz, Karachaganak, Kashagan, and Dunga fields, nor do they apply to subsoil users for which 50% of the voting shares (stakes) directly or indirectly belong to the *Samruk-Kazyna Sovereign Wealth Fund (KazMunayGas)* and some of its affiliates).

What Happens if GWS Procurement Does Not Comply with the Procurement Rules?

If GWS procurement does not comply with the Procurement Rules, the holders of SUCs signed prior to 29 June 2018^[1] risk having their related expenses disallowed by the MoE as expenses related to their financial obligations under the SUCs. If this occurs and leads to underperformance of financial obligations, it will be regarded as non-compliance with the SUC work program, which entitles the MoE to:

- ▶ impose a penalty established by the SUC (depending on the SUC, this may range from 1% to 30% of the unfulfilled obligations); and/or
- ▶ unilaterally terminate the SUC if the subsoil user's fulfillment of its financial obligations is less than 30% over two subsequent years.

Holders of SUCs signed after 29 June 2018, including subsoil users that transitioned to a new SUC model, risk penalties by the MoE in accordance with their contracts – 5% of the expenses related to the procurement that are not in compliance with the Rules.

The MoE has prepared amendments to the Procurement Rules, the first draft of which was circulated among members of expert councils in June 2019. The latest updated draft – the “**Draft Amendments**” – was published with some minor changes on legalacts.egov.kz^[2] with the expiry date for public discussion on 24 February 2020. When this article was written, the amendments had not yet entered into force. Before that, approvals are required from the related ministries, and the Justice authority must register and publish the amendments. It is likely that the amendments will be approved soon without further changes

^[1] The date when the *Code for Subsoil and Subsoil Use* dated 27 December 2017 (the “**Subsoil Code**”) entered into force.

^[2] <https://legalacts.egov.kz/npa/view?id=3094660> (Rus).

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Practice areas

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Locations

[KAZAKHSTAN](#)

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