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Opinion on [Draft Law on Subsoil](#)

Innovations in the Legal Regulation of Subsoil Use in the Kyrgyz Republic.

The mining industry has been one of the high-priority industries since the independence of the Kyrgyz Republic. The laws of the Kyrgyz Republic relating to regulation of subsoil use are mostly liberal; however, certain provisions of normative legal acts could be improved. Many foreign companies are involved in the geological exploration of subsoil and the development of mineral deposits. In this connection the adoption of new normative legal acts could significantly affect the efficiency of exploration work. In this article it is suggested to consider both innovations in the legal regulation of subsoil use in Kyrgyzstan as well as some problems that have emerged recently in the activity of subsoil users.

Granting land rights for subsoil use

One of the frequent problems that arise at the initial stage of exploration work as well as during the development of mineral deposits is a contradictory procedure for obtaining the right to occupy the land plot for mineral resources use.

The procedure for land plots allocation to conduct such types of exploration work, as (1) geological study of licensed areas with damaged integrity of earth surface and subsurface, and (2) development of mineral deposits is governed by the Regulations on allocation of land plots for subsoil use, approved by Decree of the Kyrgyz Government No. 261 dated 12.04.2006 (hereinafter referred to as the «Decree on land plots allocation»)

The regulation on land plots allocation provides for an exhaustive list of documents required for obtaining the right to use the land plot for subsoil use. If the plot is owned by the state or municipality, the subsoil user is to submit to the land rights owner (a relevant local state administration or institutions of local government (“Land rights owner”)) the following documents:

- (i) a relevant application;
- (ii) a copy of the license certifying the right to use subsoil and a copy of the license agreement;
- (iii) *in case of prospecting and exploration of mineral deposits* – a copy of a topographic map (plan) with boundaries of licensed area and coordinates of corner points;

- (iv) *in case of development of mineral deposits* – a copy of a topographic map (plan) with boundaries of mining and land diversion and coordinates of corner points.

The right to use the land plot is granted for a term equal to the license validity, certifying the right to use subsurface mineral resources. According to the general rule the subsoil user shall not be refused to be allocated a land plot for exploration work except for cases where the requested plot was allotted before to another user. The land plots for subsoil are allocated following the relevant decision to be issued by the local state administration or local government of the corresponding administrative area^[1]. Under clause 8 of the Regulation on allocation of land plots, the written consent of the land rights owner is required to conduct geological study of subsurface, namely exploration work, prospecting of mineral deposits and other survey and design works. In this view, it can be concluded that the above-mentioned decision is the decree of the local state administration or a relevant decision of the local government body that provides consent for allocation of land plot to subsoil user to conduct certain types of exploration work stipulated by the license agreement. In addition such types of work should fall under the characteristics of exploration work referred to in the above clause 8. However Clause 9 of the Regulation on allocation of land plots provides that a document certifying the right for term (temporary) use of land plot for subsoil use is a certificate granting a right to use the plot. Thus, the regulation on the document certifying the right to use the land plot for subsoil use is controversial.

In practice, according to geological companies, under the foregoing requirements of the Regulation on provision of land plots for exploration work with minor damage to the integrity of the earth's surface, such as penetration channels or construction of roads and drilling sites, a registration certificate for temporary use of land plot^[2] must be obtained. Furthermore, in accordance with the Kyrgyz land laws, the land plots located outside settlements, except for agricultural lands can be provided to foreigners by the Kyrgyz Government^[3] as per the right of term (temporary) use.

After analyzing the above-mentioned provisions of the laws of the Kyrgyz Republic it appears the following conclusion. In case of geological study of the subsoil (usually at the conclusion of the first license agreement) by foreign persons on the land of inhabited localities, i.e. cities, towns, urban settlements and villages, the company is to receive a decree of the local administration or a relevant decision of the local government body which provides their consent to occupy the land plot for conducting exploration work. Prior to subsoil development on such land, the subsoil user must obtain a certificate that grants a right to term (temporary) use of the land plot.

Problems of using the particularly valuable tree species in Kyrgyzstan

In connection with the adoption of the Law of the Kyrgyz Republic "On prohibition to fell, transport, purchase, sell, harvest, use, export and import the high-value (walnut and juniper) tree species in the Kyrgyz Republic" No. 15 dated 12.02.2007 ("Law on particularly valuable tree species"), many companies engaged in prospecting, exploration and exploitation of mineral deposits, have questions with regard to the procedure of using the particularly valuable tree species in Kyrgyzstan.

Article 1 one of the Law on particularly valuable tree species provides for a ban to fell, transport, purchase, sell, harvest, use, manufacture products, export and import particularly valuable (walnut and juniper) tree species for a term of 5 years. This ban also applies to the sanitary felling of trees, except for cases of clearing the forest from litter without felling.

Apparently, the Law on the particularly valuable tree species is aimed at the protection of walnut and juniper trees species, however, as the geological companies claim, in cases when they need to construct roads through some sections of the forestry where single juniper bushes grow, they face a problem to conduct the exploration work on mineral deposits.

Legal regulation of grazing lands management and use

A new regulatory act in the regulation of management and use of grazing lands is the Law of the Kyrgyz Republic “On pastures” No. 30 dated 26.01.2009 (“Law on pastures”). As according to the companies engaged in prospecting and exploration of mineral deposits in Kyrgyzstan, many deposits are located in the mountains and in general such land plots provided for geological purposes fall under the “grazing” category. As a result thereof the subsoil users raise questions regarding performance of the Law on pastures^[4].

Under land laws of the Kyrgyz Republic, pastures belong to the agricultural land, and therefore such land is intended for agricultural production, and in this connection the subsoil users are obliged to comply with the special status of land plots for agricultural purposes.

The Law on pastures provides a detailed procedure for management of grazing land, however, this law does not give a clear answer with respect to the use of such land plots. It should be noted that Article 2 on pastures relating to the concepts used in the Law, contains a provision on the «use of pasture for other purposes», which is defined as «*the use of pasture resources for any purpose other than grazing, which include, but are not limited to, hunting, installation of traps, beekeeping, collection of medicinal herbs, fruits and berries, harvesting of hay and fuel, extraction of small quantities of minerals, tourism and recreation of citizens*». However, the law on pastures does not provide specific provisions with respect to the use of graze land for geological purposes. At this moment the main issue of concern to subsoil users is: Do the geological companies have the right to conduct geological exploration work on the land plots located on the territory of pasture, and within what limits will the subsoil users be able to exercise their rights to conduct exploration work on such land sites? By establishing clear rules for graze land use, the subsoil users will be able to exercise their right granted by the law, as well as to avoid all sorts of claims of users of pastures and the relevant government authorities.

Conclusion. Returning to the relevance of the issues analyzed in this article, I would like to point out that due to the specific character of exploration work, the adoption of further legal acts in the field of subsoil use becomes especially important. Therefore, it appears that the establishment of clear land use requirements that fall under «grazing» category, as well as determining the form of a document certifying the right to occupy the land plot at each stage of the geological exploration work (prospecting, exploration and development of mineral deposits) for subsoil use purposes, shall enable the companies to better exercise their rights for geological study and industrial development of mineral resources.

^[1] Paragraph 4 of the Provision on allocation of land plots

^[2] As reported by the Kyrgyz Mining Association submitted at the enlarged session of the Advisory Council under the Prosecutor General's Office of 21 May 2009

^[3] Article 5.3 of the Land Code of the Kyrgyz Republic

^[4] As reported by the Kyrgyz Mining Association at the enlarged session of the Advisory Council under the Prosecutor General's Office dated 21 May 2009

