

KPLA JOURNAL

1/2023

KAZAKHSTAN PETROLEUM LAWYERS' ASSOCIATION



20TH ANNIVERSARY OF KPLA
DECARBONIZATION
TOPICAL ISSUE: COMPLIANCE

Magazine Sponsor



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Founder:

Kazakhstan Petroleum Lawyers' Association
Public Association

Area of distribution:

Republic of Kazakhstan and the Near-Abroad
and Far Abroad countries.

Design, layout

R.Yu. Borovkov

Printed by Nikay production LP publishers

The Ministry of Information and Social
Development of the Republic of Kazakhstan

Certificate of registration of printed periodical
publication No. KZ10VPY 00059407 dated
November 18, 2022, Astana
Editorial

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It would probably be no exaggeration if one were to call the period from the publication of the first issue of this new edition of the journal to date an eventful one. Let's leave aside politics, foreign and domestic, and the ongoing escalation of geopolitical events in the region, the consequences of which we are all experiencing, and try to focus on the significant episodes directly related to our work.



First of all, we successfully held XVII Atyrau Legal Conference at the beginning of September last year. Of course, huge thanks to the organizers, sponsors, speakers and participants. Frankly speaking, I didn't want to single out anyone, but **Aya Bralina**, KPLA's permanent executive director, certainly deserves special thanks. Her inexhaustible and fantastic energy, enthusiasm, persistence, creativity and openness may have been the key to the success of the conference. No doubt, the interest towards Atyrau Legal Conference both from the legal community, businesses, investors, public organizations, and from state regulatory agencies, remains high. Perhaps this is the key takeaway from the conference, at least for KPLA management, which means that we need to keep this tradition going.

By the way, in this issue we will resume reviewing the topics which became the subject of active discussion at the last conference.

In «Author's View», **Gadilbek Mursaliyev** again shares his vision of addressing the problems of Kazakhstan's transition to a low-carbon economy, while **Ainur Zhilkaidarova** reminds us of the need for government incentives to invest in reducing carbon emissions from the oil and gas sector. **Maria Puchina** and **Joshua Kelly** provided a concise but excellent analysis of the risks to the oil and gas sector given the costs of decarbonization. There is a possibility, and we very much hope so, that our collaboration with these authors will continue.

On compliance issues, which, as you may recall, also sparked a lively discussion, we publish an article by **Ekaterina Khamidullina**, which presents readers with a clear, step-by-step algorithm of actions in the implementation of charitable activities by companies. In other article on this topic, my colleague **Botagoz Darbabayeva** draws your attention to the need for counterparty due diligence as part of the compliance process to minimize or eliminate potential risks.

Returning to the past memorable dates, I would like to note that on December 5, 2022, **KPLA** officially celebrated its 20th anniversary. We did not hold any celebrations on this occasion, given the restraint and modesty that have been inherent to us over these years, but in this journal we decided to congratulate ourselves, and therefore you, dear readers, and to publish an article by the founder of our organization and its honorary president, **Zhumageldy Yelubayev**. I should probably mention that the article is not about "do you remember how it all began", but it is very actual in its essence, as always perfectly structured, probably sometimes calling for a friendly polemic, but it concerns all of us, the practicing lawyers. In general, I encourage you to take the time to read it.

As you may recall, in the last issue we agreed to continue our conversation about diversity and inclusion. **Anastasia Marchenko** kindly shares her review of this topic.

Of course, we will look at contract law topics in this issue. **Maxim Bazhenov** examines some contract terms which, in common practice, lead to heated debates between parties.

Let's turn again to remarkable dates. As you know, very recently, on April 6, Tengizchevroil (TCO) celebrated the 30th anniversary of its super-successful activity, remaining the flagship of Kazakhstan's oil and gas industry for many years now. Heartily joining in the congratulations, we decided to devote several pages in our journal to this event of great significance not only for the company, but for the country. Guest of this issue **Derek Magness**, Managing Director of Chevron's Eurasia Business Unit will answer our questions. I am sure you will find interesting the officially confirmed figures shared by **TCO** in «30 Years of Success». In a word, impressive.

Unfortunately, as usual, there are sad events among memorable dates. Our colleague and KPLA member **Ayan Khalitovich Urakov**, whom many of us had a great honor to know and meet, passed away a few years ago. He would have turned 70 this year. In «We Remember», **Zhumageldy Yelyubayev** recalls his friend and colleague.

In the end, I would like to sincerely thank all of you, readers of the journal, for your support and being a part of our joint KPLA team for many years, promoting the values that unite us. All the best!

Samat Azhenov



XVII INTERNATIONAL ATYRAU LEGAL CONFERENCE

In September last year KPLA jointly with TCO conducted the regular 17th International Atyrau Legal Conference which became a well-known brand for the legal community. Over 230 people participated in the event.

From year to year our conference gains in popularity, it becomes an expected event not only for the representatives of leading foreign and domestic oil companies, law firms, scientific institutions, sector ministries, but also for people of different professions, as most topical issues relating to the oil and gas industry. It is here every one has an opportunity to make a public appearance and express own opinion on the issues of concern, share experience, listen to criticism, make proposals on the improvement of the legislation and simply communicate with others.

In the conditions of great changes in the global universe, business came across difficulties and tasks the solution of which requires another view and fresh approach; therefore the first session of the conference was dedicated to the issues of development of the institute of compliance in the Republic of Kazakhstan. The presentations of the speakers allowed having another look at compliance control as an efficient instrument to manage business in new realities.

The second session of the conference was dedicated to the issues of decarbonization in the oil and gas industry of Kazakhstan, because it is climate change that constitutes the greatest environmental concern these days, and for all of the countries the topical issue is the decarbonization of the economy. To solve this task, investments in unprecedented volumes are required. The lawyers of oil companies shared their thoughts of pluses and minuses of the transition to low-carbon economy.

The conference provided and excellent opportunity to discuss urgent problems which are of key importance for subsoil users and the country in general.

The organizers thank all participants and the sponsor for support, speakers for their presentations, and an open and constructive dialogue with the participants of the conference.

Sincerely,
Aya Bralina
KPLA Executive Director







CERTAIN CHALLENGES IN TRANSITION TO LOW-CARBON ECONOMY: VIEW FROM A PETROLEUM LAWYER



Participation of the Republic of Kazakhstan in climate change events

Climate changes present an extraordinary global issue beyond national borders. This issue requires adoption of coordinated decisions at all levels and carrying out global cooperation to help countries' transition to low-carbon economy.

The Republic of Kazakhstan takes an active part in the solution of this issue. Thus, our country approved the UN sustainable development goals, ratified tens of international environmental conventions, thereby confirming its adherence to the global course of devising a new model of economic growth subject to "green principles" of development and transition to low-carbon development. Specifically, Mr. Kassym-Jomart Kemelevich Tokayev, President of the Republic of Kazakhstan, during the Climate Ambition Summit in December 2020 made public announcement of Kazakhstan's intention to attain carbon neutrality by 2060.

A key document in this matter is the 2015 Paris Agreement. This agreement envisages keeping "the increase of global average temperature significantly below 2°C above the industrial level and continuing efforts to restrict the rise of temperature to 1.5°C above the industrial level". Based on the data of the Intergovernmental Panel on Climate Change (IPCC), achieving the target of 1.5°C will require that countries reduce emissions in all branches of the economy, and increase capture by absorbent materials subject to natural (e.g. forestry) and technological (e.g. carbon capture and storage) solutions.

Within the framework of the Paris Agreement, all countries should make every effort to fight climate change. Moreover, the developed countries have financial and other obligations to help developing countries accelerate decarbonization of their economies. There was established the Green Climate Fund along with numerous other global and governmental funds of the developed countries, which can finance projects for mitigation and adaptation of vulnerable countries.

Each country may apply its own strategies to attain their nationally determined contributions (NDC). All countries regularly, at least once in five years, should renew their NDCs in achieving the temperature targeted in the Paris Agreement. In addition, each country is expected to increase climate ambitions on a regular basis. Decrease in earlier assumed obligations to reduce greenhouse gas emissions is not acceptable. Such action will cause the country's withdrawal from the Paris Agreement, depriving of access to any international donor assistance, envisaged for decarbonization of the economy and adaptation to the consequences of climate change.

The issue of climate change directly affects our country as well. Based on the long-term forecast, the rise of the annual average temperature is expected in Kazakhstan by 2.4-3.1°C by 2050 and by 3.2-6.0°C by 2100 as compared to the average indicators for a period of 1980-1999. Moreover, there exist serious problems related to environmental pollution; therefore, one can only encourage the active participation of the Republic of Kazakhstan in the international programs for climate change. At the same time, it is necessary to understand that the target of the country's leadership to attain carbon neutrality by 2060 is very ambitious and will not be achieved without specific decarbonization goals and efforts without considering the existing structure of the economy and without maintaining the investment attractiveness of Kazakhstan.

Transition to low-carbon economy and investment climate

Since acquiring its independence, Kazakhstan achieved significant economic advances. In the context of economic globalization and liberalization of trade, subject to enhancement of openness of Kazakhstan, rich subsoil resources and stable investment environment make Kazakhstan an attractive receiving country for foreign companies. Undoubtedly, foreign investments brought into Kazakhstan large capital, modern technologies and advanced managerial experience. However, the economic growth of Kazakhstan continues to depend in general on traditional branches with a high level of environmental pollution, and it is expected that this tendency will remain in the foreseeable future.

This circumstance in many respects determines complexities in the issue of transition of Kazakhstan to low-carbon development. It's plain to see that the state needs to somehow resolve an internal conflict between the growth of the national economy, which, in general, relies on the export of fossil fuel and implementation of a complex of measures with regard to the transition to a new growth model, having retained investment attractiveness, it is known that without the participation of foreign capital it is rather difficult to achieve planned economic indicators and get integrated into the world economy. Their application can facilitate both the solution of economic tasks and achievement of the goals of social and economic development. To attain this, the government should improve basic conditions of the investment climate and prevent discrimination with respect to foreign investors.

Transnational corporations retain a dominating position in the investment sphere in Kazakhstan. The role of foreign investors in the country's economy is so significant that it is practically impossible to manage the issue of transition to low-carbon economy. Therefore, if the implementation of state measures requires financial injection, it is quite natural to take into account the opinion of the investors who make significant contribution to replenish the budget, and additionally use their own resources of different kind to introduce green technologies. First, their presence provides an opportunity to use intangible assets, such as knowledge of clean technologies and pollution, control facilitating production of effective products as compared to those produced by domestic companies, because multinational business organizations have advanced technologies of energy saving and pollution absorption. Secondly, transnational corporations usually observe high standards of environmental protection, when they carry out their business in their country. Thus, we can expect that when they carry out their business abroad, such organizations probably will maintain high level environmental standards they used to observe in their country. Therefore, the strategy of development and all enforced legislative acts and

governmental measures should take into account the interest of foreign investors, in order not to cause damage to the sustainable economic development in pursuit of “green energy”.

Provision of a complex of conditions for the transition to low-carbon development: holistic approach

To make the transition to low-carbon economy in our country real and respective measures undertaken by the state jointly with the business community effective, it is very important to provide necessary conditions.

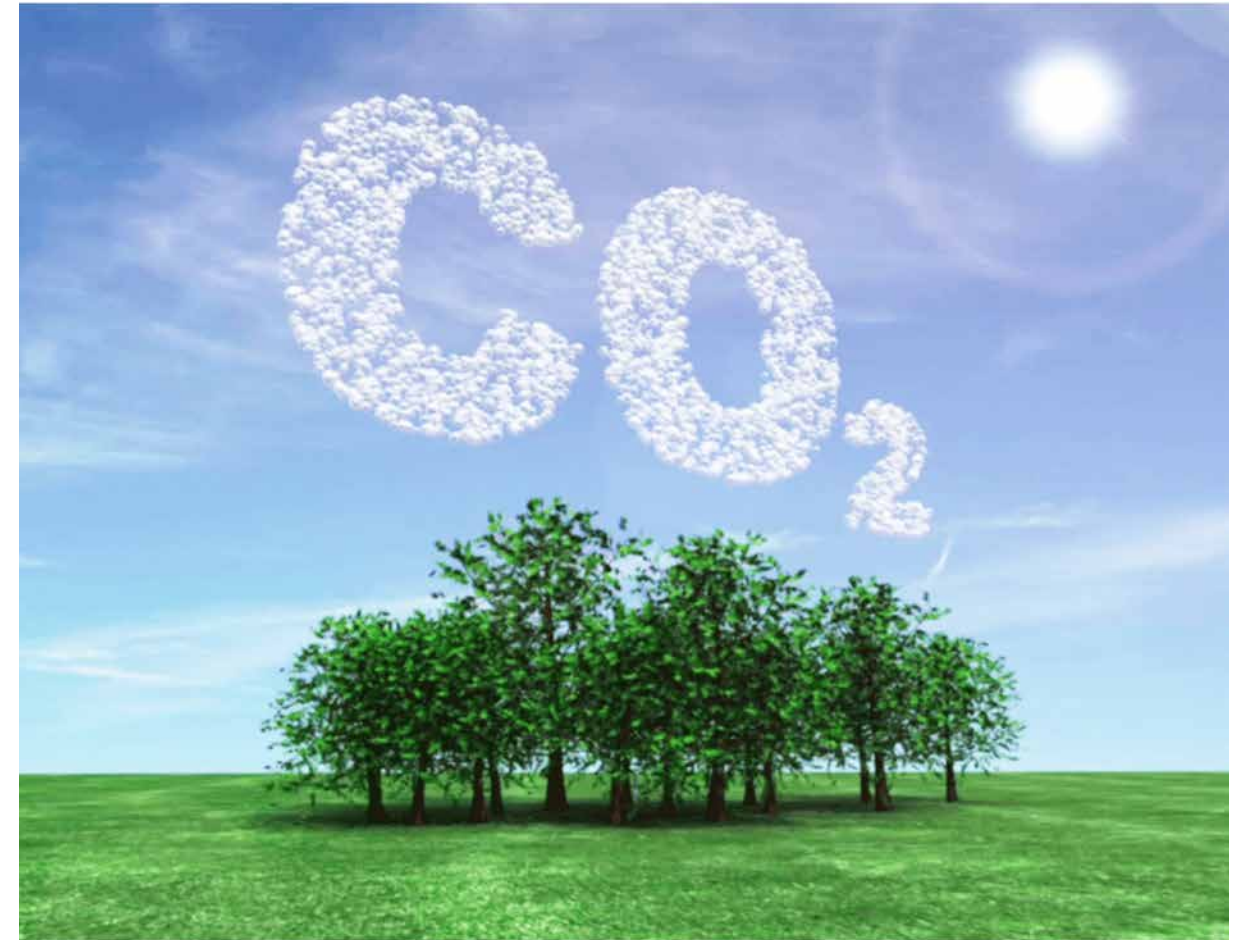
First of all, these are the issues of corruption, observance of business ethics and compliance because the issues of green economy are inextricably associated with the distribution of large financial resources; thus, based on the results of assessment, for deep decarbonization by 2060 Kazakhstan will need to invest over 660 billion dollars into low-carbon technologies.

It is a secret to no one that the level of corruption in the country remains high, including among governmental officials. The example is numerous corruption scandals involving governmental officials. It is quite evident that in such conditions it is practically impossible to implement initiatives which are complicated by content and mechanisms.

It is evident that any initiative at the governmental level will fail without effective measures of corruption control in place. So, measures adopted by the state and the society, including adoption of the Concept of anti-corruption policy of the Republic of Kazakhstan for 2022 – 2026, are, of course, welcome.

I would like to discuss another topic – imperfection of legislation. It appears that sometimes this process has a chaotic and inconsistent nature. For example, multiple changes to the RoK Code on Subsoil and Subsoil Use were made before it came into effect in the middle of 2018. There are many other similar examples. This circumstance definitely does not impart stability to the legislative framework in the opinion of foreign companies and facilitate the improvement of the investment climate.

I would like to note the lack of consistency in the implementation of some initiatives. For example, to date the Strategy for achieving carbon neutrality of the Republic of Kazakhstan by 2060 has not been adopted, nevertheless one can note amendments made to different legislative acts regulating this issue. One of the examples is recent approval of the Concept of gas industry development and commencement of reviewing of the draft Concept of power engineering development of the Republic of Kazakhstan until 2035, the adoption of which is scheduled for October this year. The approved Concept of legal policy of the Republic of Kazakhstan until 2030 also does not stipulate low-carbon development. In addition, legislative acts, primarily environmental legislation, are actively amended, with respect to low-carbon issues. Unfortunately, it is not possible to monitor the relation of the adopted regulatory legal acts to the goals of low-carbon development. I think that it would be more logical first to approve the Net-Zero Carbon Strategy, due to its inclusive nature and only then to make a transition to other concepts.



Another issue is a significant number of governmental authorities involved in the alignment of any projects and solution of issues. Often these governmental authorities lack understanding of the general project or investment climate of the country. Each of the authorities de facto has the right of veto. Therefore, it would be right to establish a single authority empowered to solve issues under the principle of “one window”.

The topicality of this gas issue should also be noted. In the situation where gas is one of key resources for Kazakhstan, if not the key one, for the transition to low-carbon economy, especially when renewable sources of energy are too expensive and unstable, and the issues of construction of atomic power stations (APS) in Kazakhstan have not been determined; this issue is subject to thorough consideration.

For example, separate documents related to this sphere state the shortage of natural gas for energy decarbonization. Earlier the country’s leadership have voiced that there is a shortage of gas for the implementation of the initiatives of transition to low-carbon economy, and therefore it is necessary to study new reserves to use gas as an alternative source of energy until complete transition to renewable sources of energy; it will require the attraction of respective investments. At the same time, with the end of the long oil supercycle competition for capital has even escalated, making all plans to resume major geological exploration uncertain. Apart from

resumption of geological exploration, there is a strong need for substantial and fundamental reform in the gas market, which will require significant investments.

Positive examples of adoption by the state of effective measures to remove barriers preventing the economic development of the country and transition to low-carbon economy need to be also presented.

I would like to begin with the issue of demonopolization of the economy. It is known that many companies in our country came across the situation where the railway sidings were farmed out to private companies, given that the legitimacy of privatization of such sidings is still doubted; and private companies used to close tracks in order to “chase up” significant funds from the siding users, including major companies of different sectors of the economy and companies partially owned by the government. Or, for example, EPR Operator which is a monopolist in the sphere of waste disposal, the functions of which were assumed by the government.

Evidently, accumulation of resources and power in the hands of “groups of individuals” who significantly influence the adoption of the public policy decisions is an issue for the economic development of the country and its investment attractiveness. Based on the facts, one can speak not about monopoly but about oligopoly. Therefore, we can only welcome an idea of establishment and operation of the Commission for Demonopolization of the Economy.

A positive example is also the exclusion of discriminatory approach to the imposition of punishments (environmental penalties and taxes) for the oil and gas industry from the RoK legislation that contradicted the international practice, including the OECD principles. One can strongly support the approach when all pay the penalty under the stationary source rates. In general, selective and discriminatory approaches are exclusively unacceptable with respect to governmental regulatory measures.

Effect of some external factors

It is a secret to no one that the global geopolitical situation changed. Many experts noted the impact of the geopolitical factor; and given that Kazakhstan and the Russian Federation are in the same economic zone, the Kazakhstani economy becomes vulnerable. The sanctions of the international community against Russia deteriorate the economic situation and investment climate in Kazakhstan.

In case of maintenance or deterioration of the extremely tense relationships which, unfortunately, resemble the times of Cold War of the mid-end of the last century; the international community will probably come across an issue of revision of the envisaged plans within the framework of the Paris Agreement, particularly deferral of assumed obligations. It is clear that the issue of climate change is still on the agenda and remains critical as before; however, compliance with the assumed obligations in the situation where even the leading western countries came across with incredible difficulties including reduction and sometimes cessation of gas deliveries from Russia, in my perspective seem to be impossible.

Also, it is worth to note the European green course (so-called the European Green Deal), called by Ursula von der Leyen, President of the European Commission, “Europe’s “man on the moon” moment”, while the Financial Times called it the most important event of our generation”. This program at the international level covers such spheres as a mechanism cross-border carbon regulation, forest and biodiversity strategies, methane strategy, international climate diplomacy and many others. All of them are important; however currently for Kazakhstan a special significance has cross-border carbon regulation which is a tool to solve an issue of achieving ambitious climate goals with the help of foreign trade measures. The purpose of this initiative consists in mitigating carbon leakage, i.e. moving production from the European Union (EU) countries to third countries, and stopping the import of products from the countries with a less ambitious climate policy.

The mechanism of cross-border carbon regulation is aimed at establishing prices for carbon dioxide emissions from EU imports. This proposal will be applied to a limited number of products at the experimental stage, for example to steel, however in several years it can be expanded to include additional sectors. There is information that other countries, such as Japan or Canada, may adopt similar measures based on EU proposal.

As is known, EU countries are the main consumers of Kazakhstani crude oil, so this issue remains topical, especially in the context of uncertainty to the extent of its application with regard to imported oil and gas and in the context of synchronization of our trade systems by quotas. In the light of the latest geopolitical events, I assume that our government will continue work on cooperation with EU in this sphere, which no doubt will influence the green economy course pursued by Kazakhstan.

Also, I would like to discuss the theme of Kazakhstan’s membership in the Eurasian Economic Union (EAEU). I assume that any measures applied within the framework of Kazakhstan’s membership in this international organization must be adopted not only based on geopolitical reality but also taking into account the transition of the countries to the low-carbon economy.

In EAEU context, at least one issue requires consideration – it is the establishment of the common oil trade market. It should be noted here that some requirements, for example, to the prioritized supply of oil to the EAEU countries can potentially restrict the independence of the Republic of Kazakhstan in unconstrained provision of economic security; it becomes especially topical given the current conjuncture of events in the territory of some EAEU member states and their neighbors. Therefore, in my perspective, the state is to show concern regarding possible consequences of the implementation of this initiative.

Certain issues of improvement of the environmental legislation

Evidently, legislative regulation must be consistent with the announced goal of the green economy. Without observance of this principle, it is impossible to solve an issue of the current investment landscape, what in its turn, will influence multiple issues related to low-carbon development. Let us come over to separate examples.

For instance, an issue of enhancing administrative and criminal liability for environmental offences. I assume that this method of encouraging is not effective with regard to creation of a motive of innovative development to

develop highly efficient resource and energy saving technologies. In my perspective, the state should support the policy “market, not instruction” which includes the emission trading scheme, fair and equitable for all industries. The state needs to provide assistance in the transformation and modernization of traditional industries with a high level of pollution and continuous improvement of the investment environment. To accelerate low-carbon transformation, the focus may be concentrated on the introduction of a number of preferential policies, to enhance support to low-carbon industries and projects, which should result in the increase of the share of investments in advanced technologies and green production equipment.

I would like to enlarge on the greenhouse gas topic. During the last year, all subsoil users faced a significant decrease of greenhouse gas emission quotas, though the Regulations on distribution of quotas for greenhouse gas emissions calculate the volume of carbon quotas for each organization by multiplying the volume of the planned production during the respective benchmark period of the plan under the list of benchmarks in the regulated sectors of economy. The methodological approach applied to reduce the volume of carbon quotas remains unclear; this approach is not reflected in other subordinate acts of the Republic of Kazakhstan in the sphere of regulation of emission and capture of greenhouse gases.

Moreover, it should be noted that some subsoil users implementing multibillion investment projects supported by the state are main donors of the state budget and, as a matter of fact, provide for tens of thousands of jobs; therefore, a sudden drop in quotas is deemed to be an ill-considered step to quota soft landing, and is not consistent with the previously adopted plans for quota soft landing. There is a high probability that the currently proposed quota trading system will cause damage to the industry and undermine the goals of foreign investments and actions within the framework of climate change efforts. The completion of exploration and expansion projects is significant for ensuring income and economic security of the Republic of Kazakhstan, and for financing the national net-zero carbon strategy consistent with the terms of the Paris Agreement. Thus, as stated by Mr. Kassym-Jomart Kemelevich Tokayev, President of the Republic of Kazakhstan on November 18, 2020, the completion of major expansion projects on time remains critical. For example, local content is significant in the creation of jobs and payment of taxes, as well as in acquisition of experience, transfer of technologies and localization of production.

It would be reasonable to support a proposal of total reduction in the Republic of Kazakhstan by 15% by 2030, considering the annual reduction by 1.5%. Also, there should be envisaged the issues of free distribution of quotas related to the production forecasts, an opportunity to retain unused distribution and to establish minimal and maximal carbon prices to stabilize the carbon market.

It is also not clear, whether draft regulatory acts will be able to sufficiently reduce concerns regarding possible corruption in the Kazakhstan system of emission quotas trading. For instance, the existing methods of measuring, reporting and verification (MRV) of greenhouse gas emissions are different for different industrial sectors. It results in the excessive allocation of available carbon quotas to specific industries (i.e. to those having “family/political” relationships). Such companies with excessive quotas are a priori in a more favorable position and obtains financial benefit from the sale of carbon quotas to the companies (e.g. oil and gas companies), which were allocated a relatively small amount of quotas. It is a discriminatory and unfair practice. The new rules should ensure transparency and fairness.

There are a couple of moments that are not directly related to the issue of decarbonization, but demonstrate the approach currently applied by the state.

Thus, the mandatory requirement to have an automated emission system (AMS) in place as of January 1, 2023, causes concern. For example, at some production facilities, the installation of equipment requires shutting down production or a production site to ensure the safety of installation works. In addition, The AMS rules were approved only in the middle of last year, therefore the companies started survey and design works rather late. Thus, without downplaying the importance of installation of such equipment here could be envisaged a milestone work schedule of installation of the equipment subject to the industrial safety requirements to ensuring safety of installation works.

As of July 2021, changes were made to the procedure for obtaining a positive opinion from the competent authority in the sphere of environmental protection. Pursuant to the RoK Environmental Code, basic design materials (including the field development project) are subject to a two-stage review and obligatory public hearings. It leads to the situation where the total time for the alignment of only the environmental part to the field development project comprises three-four months; therefore, subsoil users experience difficulties to align the field development project in due course.

Another issue is the mandatory requirement of central and local executive authorities to plant of trees within the framework of large-scale landscaping program in the country. Without diminishing the importance of planting as one of the efficient methods of climate change control, the issues are raised with regard to the reasonableness of planting trees in the semi-desert zone, in the conditions of saline soil and shortage of water. There might be a more rational approach to this issue and plant trees near water reservoirs, or e.g. near cities and other populated areas.

The list of issues discussed in this article is far from being complete not only for the industry, but individually for TCO, and clearly demonstrates that laws are frequently passed without broad participation of the business community and without consideration of its opinion.

This is why all draft laws and strategies adopted for the implementation of the strategy of transition to the low-carbon economy must be discussed in detail with business, including the issues of imposition carbon tax previously voiced by the Ministry of Ecology, Geology and Natural Resources of the Republic of Kazakhstan (MEGNR), and noted as one of planned taxes.

Given that the energy sector is with regard to the largest sector in terms of the scope and emissions, a more detailed analysis of this sector is required to ensure fair and transparent development and implementation of decarbonization goals and measures. The development model must take into account the planned/actual expansion of the oil and gas industry (and other energy sectors), because they might be sufficiently important to impact the economic plans of the state.

Conclusion

From a political perspective, 2060 is the date of commitment, and this fact should be taken into account, as it will impact the policy and the rules. Constructive efforts are necessary to resolve the issue of climate change and continue communication with the governmental authorities and interested parties to develop constructive solutions which will help ensure the future with a lower level of carbon emissions.

At the same time, full-fledged “energy transition” will involve not only technical aspects of transition to the low-carbon growth model, but a holistic integral approach to ensure respective basic conditions for the transition stated above – this also includes the high level of corruption, and without solving this issue there can be no talk of any reforms in principle; it is an issue of inadequate applicable legislation, not only environmental legislation; improvement of the legislation is not an easy task itself, and it is very important to subordinate separate legislative acts to a general strategy. I would like to emphasize that attractiveness of Kazakhstan for foreign investments should be retained and improved. The state has put a lot of effort into attracting foreign investments, which has ensured significant economic growth. At the same time, it should be understood that investments were attracted mostly into the oil and gas sector.

Currently it is the oil and gas sector that assumes a greater part of the risk, therefore working models are necessary to balance the interests of different parties; their development needs a dialogue of the business community with the state which profiled itself as a “listening state”; for avoidance of misbalance the state needs to avoid a “top down” approach in the implementation of the low-carbon policy, and demonstrated that it is really “listening”, ready to conduct a constructive dialogue and capable to involve the community in the decision-making process. It is important to take into account that companies, including companies with foreign interest, need to have an opportunity to model a potential impact of the state regulatory measures on its production activity. This issue is especially important given that the implementation of long-term plans for the transition to carbon neutrality needs serious reformation of the regulatory legal framework.

Separate business entities make their contribution to achieving the goals of the Paris Agreement; the indicators of such entities are included in the country’s NDC, in which the companies operate. Therefore, it is necessary to cooperate with the governmental authorities to encourage well-thought policies, which can strengthen NDC conditions, such as the establishment of an award for application of the most effective and less carbon-intensive technologies and prices for carbon emissions. Given that most of energy forecasts agree that oil and gas will remain an important source of energy – even in the case of a zero scenario – it is extremely important that markets stimulate most effective and less carbon-intensive producers to supply oil and gas. Perhaps, such an approach will not cause each separate company to achieve a zero indicator; however, I assume that it is the most promising way to the global zero targets.

Gadilbek Mursaliyev

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REGULATORY AND FINANCIAL MECHANISMS FOR ENCOURAGING INVESTMENTS AND REDUCTION OF CARBON DIOXIDE EMISSIONS IN THE OIL AND GAS INDUSTRY



Recently the country is actively demonstrating its commitment to the goals of sustainable development and undertaking significant steps in the sphere of regulation and reduction of carbon emissions. There were assumed the obligations to reduce carbon emissions for the purpose of achieving the goals of transition to “green economy”, to replace 10% in the total volume of electric power generation by renewable sources of energy by 2030 and 50% in 2050 subject to alternative energy. The strategic position of the country, abundance of natural resources, large territory and underestimated potential for the implementation of carbon reduction projects makes Kazakhstan attractive for investments in this direction.

Regulatory and financial stimuli for investing into carbon emissions reduction

Investments as a key leverage of the growth of the economy of our country become most topical given the global energy and technological transition, along with ambitious obligations of the country in the sphere of carbon emissions reduction. Based on the information provided in the draft strategy for attaining carbon neutrality by 2060, Kazakhstan needs to invest about 670 billion dollars into low-carbon projects. Such volume of investments requires creating a favorable investment climate to attract private and international finances. What regulatory and financial stimuli are stipulated by the investment policy of Kazakhstan to achieve success in this sphere?

The Environmental Code of the Republic of Kazakhstan of 2021 provides the list of principles of the environmental legislation. One of them is the principle of sustainable development based inter alia on the priority of conservation of natural ecological systems, provision of their sustainable functioning, water saving, energy saving and enhancing of energy efficiency, reduction of consumption of non-renewable sources of energy and raw materials, use renewable sources of energy, waste minimization, and the use of wastes as secondary resources. This principle may serve a good criterion for attracting investments into the country to implement low-carbon projects, and also may serve a restraining factor preventing the implementation of the projects with low energy efficiency and high carbon potential. Given right regulation, this principle stipulated by the RoK Environmental Code and the draft state strategy for attaining carbon neutrality by 2060, along with ESG criteria will serve an important factor for attracting international competitive investors.

Although the goals of Kazakhstan in the sphere of decarbonization were designated, to date regulatory acts in the sphere of low-carbon development and support to the goals of sustainable development have not been finalized and have not come into effect. There are many uncertainties on how the processes and approaches in the sphere of decarbonization will be structured and no clear legislative strategic and tactical provisions for potential investments to conduct assessment of economic attractiveness of implementation of the projects in this direction.

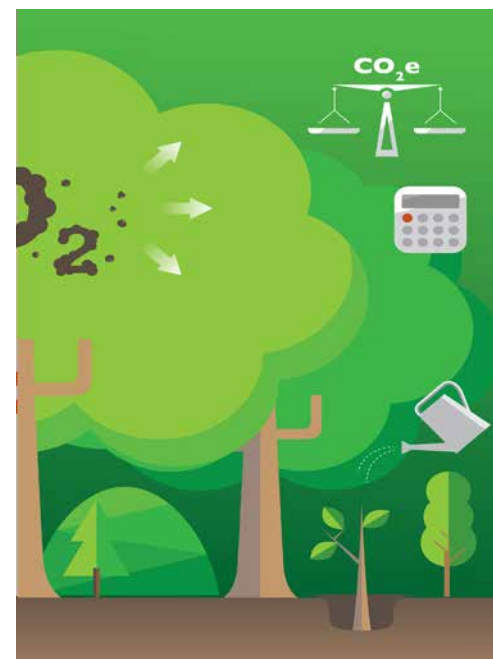
The draft state strategy for attaining carbon neutrality of the Republic of Kazakhstan by 2060 dated August 8, 2022 provides the summary of needs in “green” financing and investment, and analyzes the opportunities for

attracting financial resources, using and improving the existing legal and institutional environment, application of innovative instruments of “green” financing and mechanisms of financing “green” projects. Once the strategy is approved and introduced, it will be possible to see the whole picture and evaluate innovations in the context of achieving the goals of the strategy and investment activity.

The fact that oil and gas are one of the main exported products of the state suggests a necessity to ensure competitiveness of the good for foreign consumers; it also facilitates the implementation of the strategic goals of the country to joint 30 developed countries by 2050.

It should be noted that there are no specific mechanisms in the oil and gas industry for regulatory and financial encouragement of investments in carbon reduction; the existing investment preferences generally apply to all industries. Nevertheless, such specific plans as the inclusion of other greenhouse gases into the emissions quota trading system from 2026 – nitrogen oxide (N₂O) and perfluorocarbons (PFCs) emissions, methane (CH₄) leakage in the oil and gas industry indicate a necessity, first of all, to implement projects for reduction of carbon emissions in the oil and gas industry.

Currently investments into carbon reduction projects are regulated by the applicable legislation, therefore no other preferences except those applied are envisaged for the implementation of the investment project in the sphere of decarbonization; there will be applied the same preferences that are applied to the current investment projects. However, in the near future the effective investment provisions may be amended, thus the Concept for a New Investment Policy of the Republic of Kazakhstan until 2026 (version of June 2022) envisages the improvement of resource efficiency and development of low-carbon sources of energy as the investment development of power engineering. This concept also specifies the revision of the investment policy subject to ESG requirements, global energy and technological transition. Of course, the results of the conducted analysis do not exclude threats to the investment attractiveness of Kazakhstan as the results of transition of the countries to carbon neutrality. In general, this document seems to be most promising in the sphere of potential development and implementation in future of the preferences to attract investments into carbon projects. For example, it would be helpful to introduce new investment preferences for RSE projects, offset carbon projects, projects for carbon reduction in the oil and gas industry subject to the terms and influence of the plans for integration of carbon emissions quota trading systems of the Republic of Kazakhstan and the European Union and plans for introduction of the EU carbon border adjustment mechanism (CBAM).



The following mechanisms to encourage investments into low-carbon projects can be noted:

- Favorable tax and customs treatment, simplified procedures for opening business
- SEZ and industrial zones with zero rates
- Investment agreement
- Protection of investors' interests
- Protection of investments' rights

Favorable tax treatment with low rates as compared to the tax rates of other countries; customs treatment releasing from customs duties, and simplified procedures for opening business with a registration period of up to 100 days. It should be noted that the existing tax and customs regimes do not reflect investment preferences for green projects in accordance with international practice; there should be introduced new methods of regulation of green investments and green finances.

As a measure of the state support, 13 special economic zones were established with a zero rate of corporate income tax, land tax, customs duty and VAT on the import of goods to the special economic zones, and property tax. The existing SEZs have functional specifics; therefore it is difficult to judge how carbon reduction projects can be implemented within the framework of SEZs. It is possible that any projects may be implemented in the hybrid SEZs, including RSEs and the introduction of new technologies in the sphere greenhouse emissions reduction. In the long run it is not clear yet whether SEZs will be established specifically for green projects, while the existing sites may serve as a good start for R&D efforts in the sphere of carbon emissions reduction, commissioning of new productions in the sphere of support to RSEs, such as the manufacture of spare parts for wind and solar power plants, given that each SEZ has a limited life.

Further, several tens of industrial zones operate in the country, with a ready infrastructure, an opportunity for long-term lease or buy out of the land plot at the cadastral value. The absence of sectorial restraints and an opportunity of to execute an investment contract is also a stimulus for implementation of the ecological and green projects. Unlike SEZs these zones may be established and not have time limits, e.g. on the website *List of SEZs | Special economic zones and Industrial zones of the Republic of Kazakhstan (qazindustry.gov.kz)* there are registered in 2021 industrial zones and implementing investment projects with the support from the Development Bank of Kazakhstan and investments. The establishment of industrial zones close to the oil and gas field for implementation of carbon emissions reduction might be a good stimulus for attracting investments.

As previously mentioned, there exists an opportunity in Kazakhstan to execute an investment agreement, including for projects implemented in the industrial zones. Together with preferences granted to the industrial zones, an agreement for major projects provides for reduction of tax obligations to 20%; stability of the legislation (up to 25 years); reimbursement of up to 20% of the cost of construction and assembly works and purchase of equipment; granting additional preferences stipulated by the legislation under the agreement with the RoK Government. The oil and gas industry is the largest sector of our economy, and implementation of decarbonization projects at the operating fields such as Tengiz, Kashagan, multiple fields developed by KazMunayGas JSC will be resource-consuming. One of the stimuli for successful attraction of investments into carbon emissions reduction projects in this industry could be recognition by the state of such investment projects as priority; it would give additional preferences for corporate income tax, land tax, property tax, investment subsidies.

One of the important directions of the country's investment policy is protection of investors' interests. Most of the above mechanisms are provided by the legislation; the RoK Entrepreneurial Code (RoK EC) contains provisions

regarding investments, a procedure for obtaining preferences, conditions for exempting from customs duties etc. Article 289 of RoK EC seems to be interesting with respect to guarantees of stability in case of amendments to the legislation of the Republic of Kazakhstan. Definitely the regulates guarantees of the investment projects concluded before 2015, however this mechanism could be useful for the state as a stimulus to attract investments into carbon emissions reduction project subject to the uncertainty of regulation and strategy of the state in the sphere of attaining the goals carbon neutrality. A positive stimulus for investors to begin implementing green projects could be stipulation by the legislation and investment agreements a guarantee of stability in the application of RoK legislation in the sphere of low-carbon development.

As per protection of investors' rights it is worth to assign the existing platforms for a dialogue between an investor and the state. They include the Foreign Investors' under the aegis of the RoK President, The Coordination Council chaired by the RoK Prime Minister, the Council on Improvement of Investment Climate of the RoK Government, the AIFC Court and the International Arbitration Court, the Special Judicial Panel of the Supreme Court and the Court of Nur-Sultan for resolving investment disputes and the Investment Ombudsman who reviews the applications of investors and cooperates with the Government.

Each year different investment and financial platforms are established, e.g. AIFC, that includes the Green Finance Center, Kazinvest that makes investment proposals, including proposals for the construction of a hybrid electric power plant using biogas and solar technologies; similar projects may be attractive for the oil and gas industry, particularly replacement of consumed electric power generated by burning natural gas with electric power from renewable sources of energy, or by investing into offsets projects for offsetting or reduction the share of direct emissions from own production.

Another important circumstance – the AIFC Green Finance Center was included into the register of the accredited verifiers of the international organization determining green finance standards, Climate Bonds Initiative. Thus, to date the Center is the only institute in Central Asia accredited in two main international organizations (ICMA and Climate Bonds Initiative, or CBI), developing principles and taxonomy of the global sustainable finance, and recognized by the London Stock Exchange for bonds traded under the label Sustainable Bond Market (SBM). The status of the accredited verifier allows the Center to approve verification of the policy of the issuer in the sphere of green bonds and respective projects with CBI Standard and Taxonomy within the framework of Initiative Certification Scheme. Definitely, it will be one of the positive moments in the improvement of the investment climate in the sphere low-carbon development of the country.

The activity of individual organizations should be specifically noted, e.g. Chevron and KazMunayGas announced about cooperation in the study of potential opportunities in the sphere of carbon emissions reduction. Such initiatives provide the basis for creation of the investment direction in future subject to the strategy of the state, partners, investors in the conditions of transition to new energy, achievement of the goals of carbon neutrality of Kazakhstan and adherence to the goals of sustainable development.

In 2021 the members of the Oil and Gas Climate Initiative aligned the new strategy with the accelerated ambitions oriented towards the following directions: transition of production to carbon neutrality; leadership of the oil and gas industry; public support in the sphere of decarbonization. The major international oil and gas companies declared their goals in the sphere of greenhouse gas emissions reduction and plans for achieving the declared performance.

Compliance with legislative requirements and support to the state's goals in the sphere of decarbonization is, definitely, the key driver for the oil and gas industry. Along with the above conditions, there are several internal criteria and stimuli for investing into low carbon projects. They may include capital investments into projects for improving technological processes performance given that production ramp-up, enhancement of reliability of the equipment, decrease of fuel consumption for internal needs may be potential advantages. Moreover, such projects may show economic viability immediately after implementation or in the course of time. It's quite likely that additional stimulus for investments can be reputation and strong competition in the role of a leader in the oil and gas industry in the sphere of decarbonization depending on the company's goals, which may be an additional stimulus for investments.

Capital investments for implementing new technologies for carbon capture, storage and use may reach hundreds of millions of dollars, while the encouragement of implementation of such projects needs high economic viability after their implementation. Based on the open information sources, oil and gas companies apply different instruments to evaluate investments performance estimating costs per ton of reduction of greenhouse gas emissions. Moreover the Kazakhstani market does not demonstrate intensive development of carbon quotas trading, while given the competitiveness index, prices of carbon quota purchase at the market with the capital costs for projects, reduction of emissions per one carbon unit may be a wide gap. It has a negative impact on the attraction of investments into investment projects for carbon reduction. To encourage active investments into low-carbon development in Kazakhstan, the state needs to take into account the efficiency of the introduced reforms in the sphere of the investment policy and alignment of conducted reforms in the sphere of regulation of carbon emissions.

Conclusion

Definitely, the country will have to go through a hard way for the implementation of energy transition; and given the current state of production assets with outdated technologies, it is necessary to make a significant leap towards technological progress in the complex economic and political conditions. Given the ambitious plans in the sphere of climate change, the country needs to develop and introduce an efficient strategy accommodating the interests of the parties.

A favorable aspect in the sphere of regulation of carbon emissions is cooperation of the country with the international organizations and associations, as well as advancing initiatives and conducting studies to develop mechanisms of regulation of greenhouse gas emissions reduction subject to the international experience.

Works have been started to update the investment policy of the country considering long-term strategic goals. It is difficult yet to assess whether the results of innovation will bring to the desired goal. When preparing preferences for low-carbon investment projects the state needs to assess what categories and indicators are used by the international oil companies to make a decision on investing capital, how transparent competitive pricing mechanisms are and how competitive forecasted cost of carbon units is as compared to capital investments per 1 ton or carbon emissions quota. The important factor of the growth of investment attractiveness with regard to green projects is also ensuring clarity in the regulation of green finances, as most of carbon projects do not both ensure carbon emissions reduction and generate offset units, e.g. RSE projects; it serves as a bonus upon making a decision on investments into projects in Kazakhstan.

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DECARBONISATION – DISPUTES RISKS FOR THE OIL AND GAS SECTOR



As the international community takes steps to reach the goals of the UNFCCC Paris Agreement, it is now trite to observe that the oil and gas sector will experience significant change, particularly as a result of the energy transition to clean and low-carbon energy sources.

One key component of the energy transition that is already having an impact on the oil and gas sector is “decarbonisation” – a catch-all term that generally refers to the range of measures being taken by States and businesses to reduce carbon dioxide emissions.



Predictably, however, as decarbonisation measures take hold, oil and gas operators are likely to find that their existing operations and future projects face an increased risk of disputes with a range of stakeholders. In mapping out those disputes risks, at least three areas should be considered as early as possible.

1. Increased costs, decreased rewards

As a result of decarbonisation, oil and gas operators and their contractual counterparties may find that projects and agreements are affected by increased costs. These costs may be caused by new regulations intended to promote compliance with a State’s climate change commitments or measures intended to wind down the use of oil and gas as an energy source. These costs will necessarily affect the risk/reward analysis for existing long-term agreements (such as petroleum agreements or gas supply agreements) as well as M&A and other investment in the oil and gas sector. In turn, parties may find themselves asking whether they can terminate a contract, excuse non-performance, or require amendments to re-balance the economics of an agreement – potentially giving rise to disputes.

The consequences of changes in the risk/reward analysis of a contract will of course depend on the precise drafting of that contract and its governing law. For example, as a matter of English law, it is well established that such changes – i.e., changes in economic circumstances that make performance of a contract economically more onerous for a party – will not necessarily create a basis for termination, or excuse non-performance, unless the contract contains an express provision to that effect. Such provisions are rare and, even when they are included

in a contract, tend to be interpreted in a restrictive way (particularly in the context of force majeure clauses), with the result that the threshold that may need to be met to successfully rely on such a provision will be high.

Reasonable commercial parties should, of course, be able to negotiate an amendment to a contract in order to achieve a compromise. However, negotiating such an amendment might be difficult, if not impossible, once the economic circumstances have changed, and at least one of the parties has begun to enjoy the benefits of that change. That is likely to be especially so in the context of global, multiple-party projects, where the parties involved may have conflicting interests or different environmental policies measured against varying performance indicators. To mitigate against this risk, businesses should consider whether any contracts are likely to be reassessed by parties in the event that costs increase due to decarbonisation measures. Spotting this risk early may enable the parties to have a sensible discussion around how the contract should (if at all) be adjusted to recalibrate the parties’ bargain.

2. Government intervention and regulation

As noted, decarbonisation will increasingly be implemented through direct government intervention and regulation in the oil and gas sector, including via increased taxes to fund investment in clean energy. One of the more obvious forms of such intervention is a “carbon tax”, being a tax imposed by reference to carbon emissions. Windfall taxes designed to recoup revenues to address the damage caused by climate change are also growing in popularity, with States recently being encouraged by the Secretary-General of the UN to impose such taxes on businesses in the oil and gas sector, including in order to fund measures relating to climate change mitigation.

State authorities are also likely to be subjected to growing levels of criticism in relation to existing projects, particularly if approval is given for new oil and gas projects without appropriate conditions relating to decarbonisation, or environmental protection more generally. Indeed, in both New Zealand and Guyana, decisions to grant permits to oil and gas companies have been contested based on environmental concerns. This may, in turn, lead to a more cautious approach by States to proposals for new projects, with additional (and costly) conditions being imposed on new and existing projects.

The risk of increased government intervention and regulation can generally be anticipated early and mitigated through contractual protections (such as stabilisation clauses) and engagement with government stakeholders. Where such engagement is unsuccessful, businesses may be able to use local or contractual dispute resolution mechanisms to challenge unlawful measures (for example, arbitration against a State under a Petroleum Agreement). Arbitrary or unfair government measures may also give rise to investor-State disputes under bilateral investment treaties. One recent example of this includes the US\$15 billion arbitration claim initiated against the United States by the Alberta Petroleum Marketing Commission, following the cancellation of its permit for the Keystone XL pipeline due to criticism from environmental and other groups. In the coming years, States may well take action to limit any potential liability under bilateral investment treaties – particularly in respect of environmental measures. However, and at least for now, businesses should consider whether their corporate

structure ensures that they will have sufficient protection under any available bilateral investment treaties, should that become necessary.

3. Third party claims and climate change litigation

Decarbonisation may also give rise to an increased risk of claims by third parties against businesses operating in the oil and gas sector. Most notable in this regard is the growing wave of climate change litigation brought by NGOs or activist shareholders in oil and gas companies.

As of today, more than 100 climate change cases have been filed against businesses in the oil and gas sector (excluding cases filed in the US). One of the better known examples is the claim brought against Shell in the Dutch courts, alleging that Shell's carbon emissions violated its duty of care to the claimants. In May 2021, the Hague District Court ordered that Shell must reduce its worldwide emissions by 45% by 2030. Although the District Court's decision has been appealed, current trends suggest that similar climate change litigation is likely to increase as activists use litigation to support decarbonisation measures. That is especially so, given that the English courts – and other international centres for disputes – are increasingly accepting jurisdiction over human rights and environmental claims.

Given the unpredictable nature of some of these claims, it may be difficult for oil and gas companies to prevent this risk from materialising. However, local stakeholder engagement, investment in clean energy, and an internal framework of policies relating to decarbonisation can be used effectively by operators to demonstrate their commitment to decarbonisation. This includes, for example, BP's announcement that it is aiming to become a net zero company by 2050, or sooner.

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ANTI-CORRUPTION COMPLIANCE IN THE IMPLEMENTATION OF CHARITABLE ACTIVITIES



With the spread of the culture of corporate social responsibility, many companies in Kazakhstan have started to pay special attention to charity and allocate substantial funds for charitable assistance annually.

The Law of the Republic of Kazakhstan On Charity¹ (the “Charity Law”) was passed in 2015. It has been amended six (6) times in recent years. The latest amendments were introduced by the Law dated 4 July 2022², most provisions of which came into effect on 5 September 2022.

In this Article, we will highlight the recent amendments to the Charity Law and share our advice with the companies on the aspects they should pay attention to when considering and approving requests for charitable assistance in order to comply with requirements of the Charity Law, anti-corruption laws of Kazakhstan, and applicable foreign laws.

I. Recent Amendments to the Charity Law

The Law dated 4 July 2022 introduced numerous changes into five (5) codes and fourteen (14) laws, including Labor Code³, Code on Health of People and Health System⁴, Law On Volunteer Activity⁵, Law on State Social Order⁶, and others. We will focus only on the most significant amendments introduced into Charity Law:

- The following new concepts have been introduced:
«*corporate charity*» means voluntary activities of business entities to provide charitable assistance;
- «*fundraising*» means the process of raising voluntary donations and (or) charitable assistance;
- «*electronic charity*» means the activity associated with the attraction of voluntary donations in the form of money carried out electronically. According to the Dossier to the Draft Law dated 4 July 2022, the electronic charity was introduced in order to increase transparency of charitable activities and accountability on the use of donations by charitable organizations and beneficiaries;
- «*authorized agency in the sphere of charity*» means a central executive agency that governs charity. To date, no government agency is specified in the legal database to act as the authorized agency in the sphere of charity.

¹ Law No. 402-V of the Republic of Kazakhstan On Charity, dated 16 November 2015.

² Law of the Republic of Kazakhstan No. 134-VII dated 4 July 2022 «On amendments to some regulatory acts of the Republic of Kazakhstan on volunteer activities, charity, state social order, state order for implementation of strategic partnership, grants and bonuses for non-governmental organizations, medicine and social support».

³ Labor Code of the Republic of Kazakhstan, dated 23 November 2015, No. 414-V.

⁴ Code of the Republic of Kazakhstan On Health of People and Health System, dated 07 July 2020, No. 360-VI.

⁵ Law of the Republic of Kazakhstan No. 42-VI On Volunteer Activity, dated 30 December 2016.

⁶ Law No. 36 of the Republic of Kazakhstan On State Social Order, State Order for Implementation of Strategic Partnership, Grants and Bonuses for Non-Governmental Organizations in the Republic of Kazakhstan.

However, analysis of the Dossier to the Draft Law dated 4 July 2022 allows assuming that this agency is likely to be the Ministry of Information and Public Development of Kazakhstan;

- The competence of the authorized agency in the sphere of charity includes implementation of the state policy in the field of charity, interaction with individuals, legal entities and government agencies in the field of charity, development and approval of rules for awarding an honorary title in the field of charity, awarding an honorary title in the field of charity, exercise of other powers provided by the laws of Kazakhstan;
- Minor clarifications have been introduced into the definitions of the concepts «*sponsorship*» and «*voluntary donations*»;
- An important amendment is the introduction of the business entities’ obligation to develop internal documents for provision of charitable assistance, if and when a decision is made to develop corporate charity. Internal documents should define the principles, key directions, procedure for providing charitable assistance to users, procedure for the formation of the expenditure part of the budget of a business entity. The purposes of the provided charitable assistance are determined in accordance with the Charity Law;
- Amendments introduced an obligation for a charitable organization to publish a report in mass media and (or) Internet resource of a charitable organization on the completed charitable program at least once (1) a year. The report shall include brief information on revenues and expenses, goals achieved in the framework of the charitable program;
- The amendments provide for additional information added to the requirements to a charitable program, according to which a charitable program shall be developed, approved and implemented by a benefactor and (or) a charitable organization. The charitable program shall include goals, objectives, implementation period (terms), estimates of expected income and expenses, and the procedure for providing charitable assistance. A benefactor and (or) a charitable organization may implement one or more charitable programs.

II. Algorithm of the company’s actions when providing the charitable assistance

Further, we would like to recommend an algorithm of actions that companies can follow when providing charitable assistance in order to comply with requirements of the laws of Kazakhstan, applicable foreign laws (in some cases), and comply with provisions of internal acts of a company.

STEP 1 - Approval of the Company’s Internal Acts Related to Provision of the Charitable Assistance

Before providing charitable assistance, the company shall approve the charitable program and the Regulations on charitable assistance, which shall indicate the goals, principles, key directions, procedure for providing the charitable assistance, and procedure allowing to form the expenditure part of the company’s budget. We also recommend that the Regulations clearly indicate the responsible persons of the company involved in the procedure for approval of the provision of charitable assistance by the company.

When developing the Regulations on charitable assistance, the company’s management may provide for certain restrictions, for example, that charitable assistance shall be provided only in the field of education, healthcare, or to support the development of a certain region of Kazakhstan. The company may also provide, for example, that only a certain type of charitable assistance is allowed (philanthropic, sponsorship or patronage activities).

Given that most queries on application of anti-corruption legislation and Charity Law come from Kazakhstani companies with foreign interest, we in AEQUITAS Law Firm have an extensive experience in developing various internal regulations (policies) in accordance with requirements of the Kazakhstan laws, as well as foreign legislation, which is followed by the subsidiaries of foreign companies doing business in Kazakhstan. As a rule, these companies seek to indicate in documents with counterparties that, in addition to requirements of the Charity Law of Kazakhstan, provisions of foreign laws shall be observed, such as the US Foreign Corrupt Practices Act (the «FCPA»), the UK Bribery Act 2010, etc.

STEP 2 – Receipt of the Request and Legal Analysis

Pursuant to Charity Law, charitable assistance is understood as «property provided by a benefactor on a gratuitous basis in order to assist a user in improving the financial and (or) material conditions:

- *in the form of social support to an individual;*
- *in the form of sponsorship;*
- *to a non-profit organization to support its statutory activities; and*
- *to an organization engaged in social activities as defined in accordance with the Tax Code.*

According to our practice, charitable assistance is provided in most cases to non-profit organizations to support their statutory activities. So, upon receipt of a request for a charitable assistance of such kind, the charter and information on the registered legal entity should be reviewed.

The charter shall indicate that the legal entity is a non-profit organization, e.g., a charitable organization, foundation, public association or another type of a non-profit organization provided for by the Kazakhstan Law on Non-Profit Organizations. In order to determine whether the planned purpose of spending the requested funds specified in the request for charitable assistance corresponds to the goals, and types of activities of the non-profit organization, it is also required to review the text of the organization's charter. For example, charitable assistance may be provided to a non-profit organization to support its statutory activities.

Kazakhstani companies with foreign interest, complying with the FCPA, should pay attention to the fact that one of the key purposes of the FCPA is to prevent from the provision of charitable assistance as a mechanism to channel funds or other benefits to foreign officials⁷.

The FCPA establishes a number of prohibitions and restrictions for certain persons defined therein (issuers, «domestic enterprises», individuals and legal entities determined on the basis of territorial features), failure to comply with which by such persons is regarded as a corruption offence.

Thus, it is prohibited to perform actions specified in the FCPA with respect to:

- a foreign official;
- a foreign political party and (or) its members, candidate for a foreign public office; or
- any person contributing to the corrupt acts by a foreign official, foreign political party and (or) its members, candidate for a foreign public office.

FCPA is not an international treaty ratified by Kazakhstan, but an internal regulatory act of a foreign state, so, in our opinion, it may be applied in Kazakhstan only within the scope of an agreement between parties to a

⁷ «Foreign official» in the FCPA means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

civil law contract on the applicable law. However, in any case, such application should not violate the imperative requirements of the Kazakhstan laws. In particular, a corruption offence committed in Kazakhstan will in any case be considered by the authorized agencies of Kazakhstan, and the guilty persons will be brought to liability in accordance with the Administrative Code and the Criminal Code.

Meanwhile, in case such violation also falls under the definition of a corruption offence under the FCPA, we believe that issuers and «domestic enterprises» and their officers, shareholders (participants) and representatives (as defined in the FCPA) may actually be held liable both in the USA and in Kazakhstan.

In this regard, Kazakhstan companies that have internal regulations (policies) and enter into contracts with counterparties that provide for compliance with the FCPA should carefully check whether there is any affiliation between a non-profit organization, which filed a request for charitable assistance, and Kazakhstan officials, as well as the persons performing management functions for a state organization or a quasi-public sector entity of Kazakhstan in accordance with requirements and restrictions established by the Kazakhstan Corruption Control Law and other applicable regulatory acts.

Furthermore, special care shall be taken to confirm that the charitable assistance is not conditional upon the receipt of future orders or any other future benefit to the company.

The analysis should also distinguish between the forms of charity under the Charity Law:

- Patronage activity is aimed at the development of science, education, culture, art, sportsmanship, preservation of historical and ethnocultural patrimony of public and state.
- Philanthropic activity is intended to satisfy the needs of public and individuals, improve their living conditions, and usually relates to assistance to specific individuals in difficult life situations.
- According to the latest amendments, sponsorship activity means the sponsor's activity on provision of the sponsor's assistance under conditions of popularization of the sponsor's name in accordance with the Kazakhstan laws. Accordingly, unlike any other forms of charity, sponsorship pursues advertising purposes. Since government agencies cannot perform advertising functions, we consider it impossible to «sponsor» the events held by government agencies.

If a company intends to provide charitable assistance and has no goal of promoting the sponsor's (company's) name, we recommend using the opportunity to provide patronage assistance in the form of a charitable grant.

STEP 3 - Signing Contract

After the company approves the charity assistance a contract shall be signed between a benefactor and the recipient of the charity assistance, where we recommend clearly stating the purpose of the charity assistance, amount of the charity assistance in monetary terms, including all possible taxes, procedure for providing the charity assistance, liability of the parties, regulations on compliance with the anti-corruption laws, dispute resolution procedure, procedure for submitting the reports and other documents by the recipient of the charity assistance, including accounting documents confirming the expenditure of funds for implementation of the predetermined contractual purpose. We also recommend specifying in the sponsorship agreement the procedure of how sponsor's name will be promoted.

Note that the procedure for using a charitable grant or individual scholarship may be changed by a user with the benefactor's (patron's) consent.

STEP 4 - Verifying the Report on the Use of Charity Assistance

According to the laws, a benefactor or a charitable organization that has given its property to a user shall be entitled to demand from the user to provide a report on the use of that property. In turn, a user who has received money from a benefactor or a charitable organization as purpose-oriented charity assistance shall submit a report at the request of the benefactor or the charitable organization within the time limits and according to the procedure stipulated by the contract.

Undisbursed part of a charitable grant or individual scholarship is a repayable financial assistance, which should be returned to the benefactor.

Kazakhstan residents shall publish annual reports in mass media on the use of funds provided on a gratuitous basis by international organizations, foreigners and (or) stateless persons for charitable assistance.

In addition, according to the latest amendments, a charitable organization shall publish reports in mass media and (or) on the Internet resource of the charitable organization a report on the implemented charitable program at least once (1) a year. The report shall include brief information about income and expenses, and the goals achieved as part of the charitable program.

STEP 5 - Reporting by a Benefactor and (or) a Charitable Organization

The implementation of the charitable program must be confirmed by the report of the benefactor and/ or the charitable organization.

According to the recent changes to Charity Law, benefactors in Kazakhstan should, in their turn, keep record and submit information on their charitable activities to authorized government agencies in compliance with the procedure stipulated by the laws of Kazakhstan. Taking into account the fact that benefactor is understood as a **person**, a philanthropist and (or) sponsor, and (or) a patron of the arts, and (or) a person providing support to his native place (or “small motherland”) who carries out charity activities, we believe that the provisions of the legislation concerning the obligation of a benefactor to keep record and provide information to the authorized body are very broadly formulated and, in fact, will hardly «work in practice». For example, given the wide spread of money transfers and that many people use money transfers for charity, it is unlikely that most of them will provide information to the authorized body.

In conclusion, we would like to note that Kazakhstan’s legislation on charity is at the initial stage of its formation. In the West, engagement in charity is, first of all, beneficial, from the point of view of taxation incentives. Second, it brings prestige and raises the social status and reputation of a benefactor. Meanwhile, in Kazakhstan, major taxpayers are under monitoring are given a 3% incentive, while all other taxpayers are given to the large taxpayers, who are under monitoring, while all other taxpayers are given a 4% incentive.

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WHY IS DUE DILIGENCE CRITICAL PRIOR TO ENTERING INTO TRANSACTIONS?



The oil and gas industry is known for its significant capital investments with high risks. Given the complex and capital-intensive nature of this industry due diligence has become an essential process to timely evaluate and mitigate any potential risks, establish credibility, and ensure success of business transactions.

Due diligence is a comprehensive and systematic review of all the relevant data, financial statements, legal documents, and operational processes of a company or an asset to assess its value, risks, and potential opportunities. The primary goal of due diligence is to gather enough information to make informed decisions and avoid any issues that could arise after a transaction is complete.

All due diligence begins with gathering information about the counterparty. It is important to validate and verify the accuracy of the reported data through online resources. Depending on the level of risk presented by a counterparty, a different level of additional information gathering may be appropriate.

By conducting due diligence, companies can ensure that they are doing business with reputable and trustworthy partners, which can help build trust and confidence among them and ensure that a counterparty has the necessary expertise, resources, and capabilities to deliver on their commitments.

Therefore, due diligence of a counterparty is critical for several reasons, including:

- Mitigating Risks: Before entering a business transaction with a counterparty, it is crucial to identify any potential risks that could negatively impact the business.
- Legal Compliance: Due diligence of a counterparty helps ensure that they comply with all relevant laws and regulations. This includes verifying that they hold the necessary licenses, permits, and certifications. This helps avoid legal issues that could arise from non-compliance.
- Evaluating Reputation: Conducting due diligence on a counterparty helps evaluate their reputation in the market.



This includes their previous record of delivering on promises, customer satisfaction, and overall market reputation. This information can assist with adopting the right business decisions and help avoid negative reputational risks.

- **Financial Stability:** Conducting due diligence on a counterparty helps evaluate their financial stability. This includes reviewing their financial statements, cash flow projections, and tax liabilities. This information can inform business decisions and help avoid negative financial risks.

- **Identify Technical Risks:** Due diligence enables to identify any technical risks. This includes assessing the condition of the equipment, production levels, etc. This information helps to make right decisions and estimate the potential returns on their investment.

Any due diligence process should also include a process for reviewing the due diligence results, engaging with appropriate subject matter experts as needed and implementing appropriate risk mitigation measures.

Due diligence requirements vary depending on the associated level of risk presented by the company's operations. Failure to conduct adequate counterparty due diligence can present risk under a wide range of laws and regulations.

Due diligence is a key component of Chevron's compliance program, and a fundamental component of the company's compliance processes. Before entering any relationships with counterparty – be it with a supplier, a distributor, a customer or a business partner Chevron ensures that processes are in place and potential compliance risks from these relationships are properly evaluated, remediated and managed.

Many jurisdictions around the world either already have or are developing anti-money laundering laws. Due diligence process (knowing your counterparty) is the most suitable measure to minimize problems in this area.

Overall, due diligence is a critical process that helps ensure the success of business transactions and partnerships. By conducting due diligence, companies can identify potential risks and uncertainties, establish credibility and reputation, ensure that their partners have the necessary expertise and resources, and identify potential areas for collaboration. As such, due diligence should be a key consideration for any company before entering a business transaction or partnership.

Botagoz Darbabayeva
EBU Compliance Analyst

HAPPY BIRTHDAY, KPLA!!!



The Kazakhstan Petroleum Lawyers Association – an independent public organization uniting Kazakhstani and foreign lawyers, scientists and specialists in the oil and gas sector of the Republic of Kazakhstan

Issues of Protection of the Rights and Legal Interests of Legal advisors in the Context of Sustainable Development of Kazakhstan

Summary of the legal market and legal profession



What does legal market mean at the current stage of development of the state and civil society? Many people assume that legal market is a sphere where attorneys and legal advisors are practicing, in other words, it is a so-called “free zone” with potential clients who need legal assistance. All other types of legal activity seem not to be related to “legal market”, e.g. the activity of judges, prosecutors, investigators, lawyers of state and quasi-state structures, corporate lawyers, notaries, officers of court.

Is it a right approach to the interpretation of the term “legal market”? I dare say it is not quite right, because currently the country’s judicial system, prosecution and investigation authorities, legal functions of state and quasi-state structures need skilled lawyers to carry out legal activity in these authorities and structures. There exists the whole system of selection of lawyers to vacant positions. Thus, in the specified areas of lawyers’ activity there exist own “market” where skilled specialists are required to perform legal work. And lawyers practicing in these areas unambiguously perform legal activity: judges who administer justice treating civil and criminal cases; prosecutors perform functions of supervision over the due course of law, including law enforcement practice; notaries certify and attest jural facts and acts; corporate lawyers provide legal support to business of their employers.

Such approach to the interpretation of the legal market in a broad sense allows saying that legal activity has many directions, therefore, to give a single ground for classification of all legal professions is impossible. Nevertheless, I would like to provide two types of classification identified by different criteria.

The first classification is accessibility of profession subject to compliance with the requirements stipulated by law, and by other internal acts of professional organizations and employers. The first classification is based on accessibility of specific type of legal profession. Moreover, accessibility is deemed to be not only legal requirements

to the practicing of this profession (e.g. service record, availability of license, membership in the professional organization etc.), but quantitative demand for its representatives and existing practice. Attorneys, legal advisors, private lawyers, corporate lawyers, lawyers of law firms and consulting companies, private enforcement officers should be referred to this category.

The second classification is based on affiliation of this profession to the civil service. Specialties, conditions for access thereto are only established by the state. It also pays for the services rendered by these lawyers. Main requirements are availability of higher legal education of a candidate for vacancy. Judges of all levels, prosecutor, investigator, lawyer of state or quasi-state authority can also be referred this group of legal professions.

It appears that the classification of legal professions will subsequently help solving the following objectives:

- 1) Establishing a list of competencies for different legal professions (depending on a type of activity they should be established by the state, professional organizations, employers);
- 2) Conducting a more accurate division of the area of legal services among the representatives of different areas of legal activity;
- 3) Conducting by scientists and experts of a comparative analysis of legal professions, as well as identifying needs in developing their new types.

In this connection it is impossible to pass by an issue of identification of the needs of the state and the society... It is a very important issue directly affecting the rights of the lawyers and their security.

Thus, at present, legal community is facing many challenges and hardships, among which, *inter alia*, is absence of systematic fundamental and practically oriented education, a low level of legal awareness of the society, not in every instance unambiguous and consistent law-making and law enforcement, absence of a mechanism of influencing curricula on the part of the representatives of the professional legal community and the relevant Ministry etc. We face a great number of issues of the legal community and law enforcement in the context of a precipitous deterioration of the quality of legal education.

It was stated at one of the event convened by the RoK Ministry of Education and attended by participation representatives of the universities and practicing lawyers, that about 400 thousand lawyers in were trained in Kazakhstan during three decades of independence, and almost 70 higher education institutes producing about 10 thousand lawyers annually. Almost all higher education institutes have departments of law. Most graduates in the field of law come from educational institutes specializing in pedagogics, economics, technical sciences, agriculture, and other fields. Moreover, both defense attorneys and the representatives of law firms keep saying of desperate hunger for personnel and lack of highly qualified specialists among the graduates.

The low quality of legal education resulted in the appearance of a great number of “lawyers” incapable of maintaining high standards of the profession, ensure proper self-regulation of the legal community. It should

be noted that not every lawyer with a diploma is a lawyer by vocation. Unfortunately, except for several great law schools and several tens of excellent teachers, in general the level of legal education in the country is low. Therefore, it is time to resolve at the state level an issue of significant reduction of the universities training lawyers. For the country populated with eighteen million people two-three legal universities are enough to accumulate the whole lot of the academic teaching staff, who in their turn will improve the quality of legal education.

On the Lawyers' Rights and Legal Interests

Only few people do not talk about the lack of independence and excessive restrictions to the bar and to self-regulation and independence of legal advisors. Meanwhile, independent attorneys and self-regulating and independent Chambers of Legal Advisors are a guarantee of the rights of citizens to qualified legal assistance, and through it a guarantee of observance of all remaining rights and legal interests.

Thus, the state takes part in the attorneys' activity at the stage of entering the legal profession by state licensing and participating in the attestation of future attorneys. At the same time, in all developed countries, whose ranks Kazakhstan is striving to join, the Bar independently makes decisions regarding its members. In the recent time, the legal community has witnessed judicial disputes initiated by the governmental authorities with respect to cancellation of the attorney's license authorizing to practice law. At the same time, consideration of the issue of conformance of any attorney's behavior and activity with the Bar's standards should be a competence of the Bar itself. The legislation on advocacy establishes ungrounded restrictions to the employment of attorneys and their business activity, the result of it is the violation of their constitutional rights. All the above has a negative impact on the development of the efficient and independent Bar.

As for legal advisors, within more than two years of adoption of the specialized law this category of lawyers demonstrated that the Kazakhstan legal community is capable of effectively consolidating and conducting its activity on the basis of self-regulation. Regardless the existence of legislative qualification requirements to the status of a legal consultant, which include, apart from higher legal education, a requirement for mandatory two-year experience and testing, the new institution named as the chamber of legal advisors developed all necessary mechanisms for control of the quality and compliance by its members with professional standards.

It is further necessary to develop this legal institution for protection of the rights and powers of legal advisors, including introduction of an institution of professional secrecy for legal advisors similar to that for attorneys. Given social importance of independence of the legal community, principles, and provisions of the RoK Entrepreneurial Code and the RoK Law "On Self-regulation", there can be no talk about any interference of the state with the self-regulation of legal advisors. It is necessary to understand that independent legal advisors acting in accordance with the principles of self-regulation is an opportunity for individuals and legal entities to protect their rights and legal interests and resort to legal mechanisms on different categories of issues.

It should be noted that the power and the legal community made the first step to the self-regulation of the legal market and legal profession, and it should be evaluated as a positive factor of development of the legal system of Kazakhstan. Meanwhile, further development of the legal market and legal profession is to be carried out on the basis of the generally accepted international principles and standards. We do not need to invent own Kazakhstani way in this sphere, we need to be guided by the international practice supported by, for instance, the United Nations, where the Special Commission on the Issues of Maintaining of the Rule of Law, Independent Judicial System and Legal Profession was even created¹.

Subject to the recommendations of this Commission, institutes, bars and legal advisors should at least meet the following requirements:

- 1) independence;
- 2) self-regulation;
- 3) existence of a legal right to protect independence of legal profession and interests of profession members.

As a rule, the activity of attorneys and legal advisors is deemed to be independent if in its entirety it is free from outside influence. The best guarantee of such independence is existence of a self-regulating entity which is understood as an organization independent of the state or other state institutions, capable of establishing own rules and provisions, independently make decisions without outside influence, to represent the interests of its members and independently finance its activity.

Respectively, when assessing the degree of independence of such structure there should be analyzed the existing legal and administrative provisions and the real impact they make on the capability of lawyers to perform their functions based on independence and integrity.

The regulating bodies of attorneys (the Bar) and legal advisors (the Chamber of Legal advisors, as well as the associations of the chambers of legal advisors established by them based on the principles of voluntariness) should assume important functions to ensure self-regulation in this area of professional activity, specifically:

- 1) development of the requirements and procedures with respect to the access to legal profession;
- 2) development of the code of professional ethics;
- 3) development of standard acts of the Bar and the Chambers of Legal advisors;
- 4) development of the rules and procedures for disciplinary proceedings with respect to attorneys and lawyers violating the requirements of the legislation and the rules of professional ethics;
- 5) development of the rules and standards for qualification improvement.

Existence and validity of these functions, established or recognized by the law, protect the legal professional community from the outside interference with the legitimate activity – from different forms of control and

¹ Report of the UN General Assembly Special Rapporteur on the Independence of Judges and Lawyers prepared by way of implementation of Resolution 35/11 of the Human Rights Council. See <https://undocs.org/pdf?symbol=ru/A/73/365>

pressure on the part of the governmental authorities and other external parties to the legal relations in the area of the activity of attorneys and legal advisors.

Moreover, the bars and the chambers of legal advisors should have sufficient human and financial resources to perform their functions individually and independently. Thus, the important means of maintaining effectiveness and independence of these entities is membership fee. In the cases where it is necessary to attract funds of external sources, the bars and the chambers should always monitor that such external financing would not threaten their independence.

To guarantee independence of the legal profession, most of the members of the executive body in the lawyer organizations should be lawyers elected by peer lawyers. The members of the executive body should have an opportunity to perform their functions without outside interference. The situations where the state, particularly the executive power, fully or partially control the executive bodies of the lawyers or their management team, are incompatible with the principle of independence of the legal profession.



It is in the interests of protection of independence of the legal profession, that the issues of regulation of access to the legal profession, development, and implementation of the standards of professional behavior, ensuring improvement of lawyer qualification and treatment of disciplinary cases with their respect should be in the jurisdiction of the bar and the chambers of legal advisors. The governmental authorities should not interfere with the process.

The institute of the rights of the bar and the chamber of legal advisors should be the protection of individual members, specifically in the cases where they are not able to duly protect themselves. The obligation of all governmental authorities is to respect the functions of the lawyers' professional organizations to protect their members, in order that they would not have an opportunity to practice their profession without any threats, obstacles, prosecutions and unjustifiable interference.

Most important is the establishment of requirements and procedures for access to the legal profession. Access to the legal profession should be based both on higher legal education confirmed by a respective diploma and the charters of the bar and the chamber of legal advisors preliminary established by law. Access to the profession should be based on the merits given qualification, skills and capabilities of the candidates and their independence and integrity. The important instrument in the process of selection of candidates can be examinations/tests for the knowledge of the legislation of the Republic of Kazakhstan. Moreover, the participation of the governmental authorities in the assessment of candidates can have a negative impact on the independence of the legal profession.

Access to legal education and entry into the legal profession should be open to everyone who meets the established requirements, and discrimination in admitting to the legal profession for whatever reason is inadmissible. At the same time, given that independence of a lawyer is a fundamental prerequisite for its activity, the regulation of the profession by the state is reduced to the establishment of only most significant principles of lawyer activity and vesting lawyer professional organizations with self-regulation rights on other issues.

Sustainable Development of Kazakhstan and the Legal Community

Our thoughts of sustainable development² of Kazakhstan, including the legal community, require our thoughtful approach to the development of the legal of the state and legal profession.

As the system of legal education will improve, there must be improvement in regulation of the legal market based on positive international standards of legal activity, they should be implemented in our practice, so that lawyers become real specialists in this area and be capable of influencing the on the situation with rule of law and order in the country.

² Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs; it is a balanced and manageable development of the society without destroying its natural basis and ensuring continuous development of human civilization. The term "sustainable development" was introduced by the International Commission on Environment and Development (UN Brundtland Commission, 1987).

Thereby we should come to such order when it is not sufficient to have a diploma of higher legal education to carry out professional activity, also it is necessary to take a mandatory training and become a member of a self-regulating lawyer organization, e.g. a member of the National Bar Association or a member of the Chamber of Legal advisors. Membership in the professional lawyer organizations should be a ground for “access to practice”. Such systems exist in all civilized countries of the world, and Kazakhstan does not need to “reinvent the wheel” in this area; it is necessary to use best experience of the foreign countries in the issues of legal market regulation. Then we will ensure a state of things where legal services to economic entities and representation in the courts and other governmental authorities will be carried out by the best lawyers of the country. Those who do not meet this level should improve their qualification and take special training to get “admission to practice”.

The modern stage of development of the society and the state demonstrates that lack of proper regulation of the activity of professional lawyers, especially, commercial lawyers, does not allow using a potential of this large group of most active members of the society to achieve the goals of the country’s development. In addition, a necessity of joint work to maintain the level of people’s trust to the power and the judicial system in the development of new approaches to the interaction of the governmental authorities, state administration and courts with the society through professional lawyers becomes evident. It is time to reform the regulation of the activity of practicing lawyers for solution of the following objectives:

1) to establish legislatively high uniform professional standards and basic principles of activity for all practicing lawyers, including attorneys and professional lawyers rendering legal services. High standards and requirements for practicing lawyers should include, in particular, obligations to the society and status of “assistants to justice”; it does not imply the status of “assistants to courts”. An attorney and a legal assistant in their professional activities should assist in promoting the legitimacy, justice and rule of law in the country and the society, this is the essence of the status of “assistant to justice”, whereas attorneys and legal advisors assist in the exercise of the constitutional right of each to qualified judicial protection. Therefore, access to practice of law, including access to professional representation in courts, should be carried out only through membership in the organizations of practicing lawyers;

2) to enhance professional liability of actors of such activity and improve the system of compulsory insurance of professional activity;

3) to carry out a complex of measures to strengthen the status of an attorney and a professional lawyer, including the granting to all professional lawyers of the rights and privileges of lawyers (professional secrecy, right to inquiry, independence and immunity), as well as additional rights and privileges in courts and governmental authorities;

4) to establish conditions and requirements to the provision of legal services and legal assistance free of charge to underprivileged people, and legal support to social projects, participation in law-drafting activities, monitoring of the legislation for the purpose of its improvement;

5) to establish uniform requirements to the retraining of professional lawyers and requirements to legal education.

Provision of legal assistance and legal services without “access to practice” should be considered as illegal activity with all resulting consequences. Somebody can object and say how the notion “legal assistance” differs from the notion “legal services”. There is an answer to it, obtained as the result of review and analysis of international practice which is based on a certain theoretical assumption. Thus, the terms “legal assistance” and “legal services” are not identical notions by their content, so there must be a statutory definition for them. Moreover, “legal assistance” should be understood as professional activity of attorneys providing free legal assistance guaranteed by the state in accordance with the RoK legislation, and free complex social legal assistance provided by legal advisors based on pro bono principle. Moreover, the minimum scope of such legal assistance should be established by a decision of the lawyers’ professional association.

The term “legal services” should be understood as professional activity of legal advisors and attorneys carried out on the basis of legal services agreements with legal entities, organizations, individual entrepreneurs and individuals. Thus, the types of “legal services” should include all types of paid legal services, provided by legal advisors and attorneys: legal advice, legal support to business projects, representation in courts, governmental authorities, representation in commercial arbitrations courts, drafting documents etc.

The following fundamental principles of provision of “legal assistance” and “legal services” should be stipulated at the legislative level: right to legal assistance and legal services; equality in the access to legal assistance and legal services; independence of a lawyer; right to receive information; social equity and social profile in the provision of legal assistance and legal services; accessibility of free legal assistance to the unprivileged people; right to free choice of a type of legal assistance or legal services; objectivity, integrity in the provision of legal assistance and legal services; maintaining confidentiality and other important principles.

In conclusion, I would like to note that the legal profession is extremely important for normal functioning of the society. At all times lawyers enjoyed moral privileges, but at the same time they bore an enhanced scope of obligations to the society. Given a specific scope of lawyers’ rights and obligations to the society, legal profession is to be subject to state regulation.

At the same time, given that the independence of a lawyer is a fundamental prerequisite for his activity, regulation of the profession by the state is reduced to the establishment of only most significant principles of lawyers’ activity and endowment of professional organizations with the rights of self-regulation in other matters. Self-regulation of the legal profession on the basis of certain principles established by the state, should stipulate mechanisms which would guarantee to the society lawyers’ compliance with their mission as a link between the government machine, including courts and individuals as well as legal entities.

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DIVERSITY AND INCLUSION – KEY FACTORS OF SUCCESS OF PETROLEUM COMPANIES



The article discusses how diversity and inclusion facilitate success of petroleum companies that introduced these principles into their corporate culture.

Currently more companies understand that diversity and inclusion — these are not mere words, but key factors which play an important role in ensuring their sustainable development and long-term success.

Diversity of people inside the company, respect to different cultures, opinions, beliefs and experience – key principles introduced into their corporate culture of the company of the petroleum sector. First of all, these aspects facilitate formation of new and successful services leading to the increase of company's profit causing enhancement of productivity and improvement of the company's performance. Sharing ideas and experience facilitates development of new approaches to the solution of problems and improvement of the quality of work helps the company to find most innovative solutions and approaches.

When the company recognizes and respects differences between people, it creates a more diverse and inclusive working environment which allows the employees to develop their potential and achieve better results to implement and continue successful performance of the company in the long run.



Diversity and inclusion improve reputation of the company adding positive image to attract a great number of clients and potential investors.

Some well-known companies of the petroleum sector, such as Chevron, Shell and others successfully introduced diversity and inclusion principles into their corporate culture, having included these principles in their strategy of sustainable development. Companies acknowledge that it is diversity and inclusion which are key factors for success, demonstrating it through different initiatives of attracting talented employees from different cultures and social groups to the petroleum sector.

For the implementation of these principles of diversity and inclusion companies conduct training under various programs for the purpose of personnel development creating a more open and democratic working environment where each employee feels comfortable and confident. Regardless that the implementation of these principles requires significant efforts and resources of the companies, in the long run it will yield certain benefit for the companies.

Anastasiya Marchenko
KPLA Member

ANALYSIS OF SOME DISPUTABLE TERMS OF CONTRACTS/AGREEMENTS



Being a lawyer specializing in dispute resolution, I am frequently engaged in contract drafting. Usually the lawyers of counteragents try to focus on and amend almost all provisions of a draft contract. However a number of terms cause most lively discussion.

Below I provide some of such provisions, as well as their brief review on the basis of the rules of the legislation of the Republic of Kazakhstan and existing judicial practice. The notions of contract and agreement (and their derivatives) are used in the equivalent meaning.

Counteragent obligations to comply with the legislation and indemnify losses in case of its breach

A counteragent obligation to comply with the legislation results from the legislation per se. At first glance, the inclusion of such an obligation in a contract is redundant and unnecessary.

However a key role in this process is played by an opportunity to charge a counteragent with civil liability, if it breaches the legislation causing damages to the company.

For example, if a counteragent breaches the provisions of the tax legislation, does not pay taxes or fails to enter a transaction with the company in its accounts, does not pay taxes, it will result in additional charges to the company. Is there any opportunity in this case to collect all losses from the counteragent in the amount of additional charges?

The Civil Code (clause 4 of Article 9, Chapter 20 and Chapter 47) stipulates liability for violation of the obligations (contractual liability), as well as liability beyond obligations legal relationship (non-contractual/tort liability).

Hence, if a counteragent violates any obligation, the company has the right to charge it with civil liability and collect losses caused by committed violation.

It occurs that if a contract stipulates a counteragent's obligation to comply with the legislation, the violation by the counteragent of any provision of the legislation may be treated as the violation by it of the assumed obligation. In such case charging it with contractual, liability under Chapter 20 of the Civil Code is deemed prospective (nevertheless there is a risk of default of such requirement, given that such an obligation may be treated not as an obligation stipulated in Article 268 of the Civil Code).

However if a contract does not specify such an obligation of the counteragent, then in case of violation charging it with contractual obligation is deemed of little promise because it does not violate assumed contractual obligations.

It turns out to be possible in this case to charge it with non-contractual liability under the rules of Chapter 47 of the Civil Code. However the existing judicial practice treats a little bit different circumstances (actual damage to the property etc.) as the grounds for charging with non-contractual liability. Also ambiguous in this case is the ratio of losses to damages.

It follows that in the event of violation by a counteragent of the legislation and losses incurred by the company, charging it with contractual liability specifically looks more promising (though ambiguous). However, a contract must stipulate a counteragent's obligation to comply with the provisions of the legislation.

Also it will be relevant if a contract stipulates that in case of violation by a counteragent of any provision of the legislation, it is obliged to reimburse the company for all its losses related thereto. Given that such a condition may be treated as a ground for charging with a liability pursuant to paragraph 2 of clause 2 of Article 359 of the Civil Code.

Force majeure or circumstances of insuperable force

Frequently enough, specifically in relationships with foreign counteragents, contracts contain a provision under which the parties to the contract are exempted from liability in the event of force majeure.

Our Civil Code neither stipulates nor defines such notion as force majeure, as well as it does not treat it as equivalent to the notion of a circumstance of insuperable force.

The definition and elements of force majeure are determined by the parties to the contract, while elements of circumstance of insuperable force which are extraordinariness and inevitableness are stipulated by the Civil Code (paragraph 1 of clause 2 of Article 359).

Hence the conclusion follows: force majeure is not a circumstance of insuperable force unless the parties attach the meaning to it identical to a circumstance of insuperable force, or in the interpretation of the contract a conclusion is made that the parties understood force majeure as a circumstance of insuperable force) and can be a separate ground for exemption of the parties to the contract from liability.

Specifying in the contract of other grounds for exemption from liability (including force majeure) apart from those stipulated by the Civil Code is acceptable by virtue of paragraph 2 of clause 2 of Article 359 of the Code.

However with respect to this issue it is important to understand that if force majeure is not a circumstance of insuperable force, it is necessary to pay attention to its definition in a contract. Usually contracts treat force majeure as a circumstance beyond the parties' control and occurrence of which makes it difficult or impossible for a party to fulfill its obligations.

Using such language causes a question whether, for example, cold (other disease) of the entire personnel of the counteragent beyond its control which prevented fulfillment by the counteragent of its obligations can be treated as force majeure.

Given that the usual language of force majeure does not contain the elements of extraordinariness, could be treated as force majeure, and a counteragent may be exempted from liability (nevertheless there is always a risk that such argument will be treated as too formal). The example might seem prosaic, however illustrative enough.

Such definition causes a question what is extraordinariness and what elements constitute it. The civil legislation does not provide an express answer to this question. In this case the rules of the public law, specifically provisions of the RoK Law "On Civil Protection", based on the results of which a conclusion can be made that extraordinariness is somehow related to the events that might cause or caused human losses, harm to health or environmental damage, significant material damage and misbalance of living conditions of people

Given that the usual language of force majeure does not contain the elements of extraordinariness, could be treated as force majeure, and a counteragent may be exempted from liability (nevertheless there is always a risk that such argument will be treated as too formal). The example might seem prosaic, however illustrative enough.

In practice when preparing for a large-scale arbitration our team faced a question. The contract expressly provided the following: the parties are exempted from liability in case of force majeure (i.e. emergency circumstance beyond the parties' control making it difficult or impossible to perform contractual obligations), including natural disasters ... acts adopted by the government authorities of the Republic of Kazakhstan and/or other states. The customer did not fulfill its payment obligations referring to the sanctions/restrictions imposed by the third country government. Such situation led to significant losses incurred to the supplier.

The question was whether the supplier has the right to demand reimbursement by the customer of losses and payment of forfeiture or the customer is exempted from liability for breach of its obligation given that the imposed sanctions are force majeure (because the contract does not expressly state that force majeure includes acts of the authorized government bodies of other states).

In our team's perspective, in this situation the provision of force majeure should not apply, and the customer should be charged with civil liability, because the adoption by the third country government of any act does not have an element of extraordinariness (at least in the situation of imposition of sanctions/restrictions) and, as such, should not be treated as force majeure (given that the parties define themselves that force majeure should have an element of extraordinariness). In this dispute the parties resolved to settle the situation amicably.

The above demonstrates that when drafting a contract the attention should be paid to the provisions of force majeure, insuperable force and other grounds for exemption of the parties from liability.

Unilateral termination or waiver of a contract

The Civil Code (Article 401) stipulates that a contract may be terminated by agreement of the parties unless otherwise provided by the contract or legislative acts as well as in the judicial procedure.

The interpretation of this provision causes a question whether a contract may provide otherwise and grants any party/parties the right to terminate a contract unilaterally in non-judicial procedure.

In my perspective, the answer should be negative, though some legislative acts (e.g. the Public Procurement Rules), as well as some acts of judicial practice are based on the assumption that the termination of a contract is not acceptable. Practice also demonstrates that unilateral termination of a contract is deemed to be acceptable.

Unacceptability of unilateral termination of a civil contract is explained that a contract is an agreement of two or more persons. For its execution it is necessary that not one but two or more persons expressed their will. Therefore it should be terminated either by agreement of all of the parties or in the judicial procedure.

The proposed logic is supported by other provisions of the Civil Code (both General and Special Parts). Thus, Article 404 specifically stipulates the right of the parties to unilateral waiver of the contract. If it had been possible to terminate a contract unilaterally, Article 404 would have been unnecessary.

All provisions of the Special Part of the Civil Code stipulate the right of either of the parties only to require termination of the contract and not the right to terminate it themselves. The exception is clause 2 of Article 521 which stipulates that the rent recipient may terminate the annuity contract, as well as clause 1 of Article 882, which stipulates that the consignor may notify of the termination of the contract in the event of reorganization of the consignee. However, it is not an indicative moment, it is rather the inappropriate language used in the Code (it would be more appropriate to envisage the right of waiver instead of termination of the contract).

The proposed logic is also supported by the circumstance that the legislation is aimed at harmonizing public relations (as well as making them stable and clear). Provision for an opportunity to terminate a contract unilaterally may produce a reverse effect, i.e. disordering of relations (and also instability and ambiguity), because either party will be able to terminate the contract at its discretion unilaterally.

Here indicative is the situation where the lessor, having stipulated in the apartment lease contract the right to unilateral termination, sends notifications of termination of the lease contract to the lessee and requires that the latter immediately leave the apartment. Though the Civil Code (Article 556) provides for the right of the lessor only require termination of the contract in the judicial procedure and does not contain any provision of the lessor's right to unilateral termination.

Providing that the lessor may at any time at its own discretion terminate the contract, then there appears instability, ambiguity and no sense in the execution of the contract.

In my perspective, unilateral termination of a civil contract is not and may not be acceptable, no matter whatsoever is stipulated in the contract or the legislation (unless changes are made to the Civil Code). Judicial practice encounters acts supporting this position. However it should be repeated that sometimes practice is based on the reverse.

In my opinion, if a contract stipulates the right of unilateral non-judicial termination of the contract, such provision may be treated as disputable and may be recognized as invalid. With respect to the legislation, the provisions of the legislation allowing unilateral termination of the contract should not apply by virtue of clause 2 of Article 3 of the Civil Code.

The above demonstrates that when drafting contracts it is important to pay attention to the language used in the contract regarding the right of unilateral termination and waiver of the contract.

Maxim Bazhenov
Head of the Law Firm
Practicing Lawyer



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KPLA**



THE INTERVIEW WITH MR. DEREK MAGNESS, MANAGING DIRECTOR, CHEVRON EURASIA BUSINESS UNIT.



— Dear Mr. Magness , Chevron came to Kazakhstan thirty years ago, entering into agreements on establishment of a joint venture for Tengiz field development. Today, after three decades, how do you assess this partnership among Chevron and the Republic of Kazakhstan?

— In the early 1990s, a new era commenced for the country subsequent to the disintegration of the USSR, ushering in a period of great uncertainty. Kazakhstan, in particular, was an enigma to us, and we, in turn, were newcomers to the region. This period was marked by novelty and intrigue, as we relied heavily on trust to establish ourselves in a foreign land and attract investments to a little-known country. Notably, the Tengiz oil field, one of the most challenging in the world, posed significant risks related to the abnormal pressure and high level of H₂S in the crude oil. Given our knowledge and prior experience of managing sour crude and gas around the world with a high level of operational reliability, Chevron was invited to participate in this complex project to develop Tengiz field. It is important to ensure that the country's resources are utilized in a safe and responsible manner that benefits the economy and the people of the nation. As stewards of these resources, it is our duty to ensure that they are managed with care and responsibility.

Over the last 30 years, we have relentlessly collaborated with the Government of the Republic of Kazakhstan, our partners - KazMunaiGas, Exxon Mobil and Lukoil to provide affordable, reliable, and ever-cleaner energy. We have brought our global technical expertise, technology solutions and capital investment to the country – continuously improving operational performance as well as expanding production capacity. There are many things to be proud of. Let's take only figures. Just in ten years Chevron contributed an average of \$11.7 billion per year in total annual economic output to country's economy. Chevron helped deliver 6.3% of Kazakhstan's total GDP over the last decade. Our joint project in Tengiz remains the largest contributor to the country's national economy. Since 1993, TCO delivered more than \$176 billion in direct financial payments to the country, including \$43.6 billion spent on local goods and services. By the end of 2022, Kazakhstani citizens held 94.8% of positions in TCO's base business compared to 50% in 1993.

It is worth noting development of local production as well. Over the past decade, Chevron has spent \$14.1 billion to development of local businesses. This spending stimulates a virtuous cycle of economic activity across an extended supply chain, generating an additional \$1.4 billion in sales at local businesses every year. Over \$28.1 billion in sales at Kazakhstani businesses in the last 10 years has been prompted by Chevron activities. One of the brightest examples is a pioneer in the production of polymer pipe products in Kazakhstan – Atyrau Polyethylene Pipe Plant. It was launched by Chevron in 2003 as part of our commitment to diversify the economy of the newly independent country. This is contribution of the corporation leading the development of the giant Tengiz field to the diversification of the Kazakhstani economy.

One of our key priorities is investment in people. And I am very proud that we support training and professional development of local personnel, help them to unlock their potential, get more opportunities, and now about 95% of positions in TCO are filled by Kazakhstani professionals.

— What major threats/opportunities do you foresee for the oil & gas industry?

— First, the scale of the energy system is enormous to keep the lights on, to keep the trains running. And the consumers of energy tend to be long cycle capital Investments – airplanes, ships, factories, cars. So, the scale is enormous and growing.

Second, the speed of introduction of technologies is governed by economics and demand and we've seen when coal came into the system to go from 1% of demand to 10% took 60 years. It was a much smaller Energy System in those days both oil and gas took four decades to go from 1% to 10%. We've seen 4.5 trillion dollars invested in wind and solar over just the last decade and it's 1% of global energy supply to 3%. The scale governs the speed, the speed will be different to different parts of the world.

Third, so that brings me to the third point which is we need all solutions. We need wind. We need solar. We need electric vehicles. We also need oil and gas. We should be trying to find a way to make every component of affordable and make it reliable for national security purposes and make it ever cleaner.¹

Chevron knows the future of energy is lower carbon and achieving the global net zero ambitions of the Paris Agreement will require partnership and collaboration. We firmly believe that we can play an important role in the country's energy transition and achievement of its carbon-reduction targets. Through our collaboration with KMG, we hope to contribute to providing affordable, reliable, ever-cleaner energy, and help the industries and customers who use our products to advance their lower carbon goals.

— Does Chevron consider any new major investments into Kazakhstan, including Tengiz?

— First of all, I would like to mention Tengizchevroil expansion and modernization. Currently production output in Tengiz is 600-700 thousand barrels per day. Back in 1993, the total volume of oil production in Kazakhstan amounted to about 26 million tons and alone in 2022 TCO crude production was 29.2 million tons of oil. As you know, in 2016 TCO partners announced approval for the final investment decision of the Future Growth Project

¹ Mike Wirth's interview to CNN's Fareed Zakaria, March, 2023

- Wellhead Pressure Management Project (FGP-WPMP), the next major expansion of the Tengiz oil field. This project will expand crude production by approximately 12 million tons per year/260,000 barrels per day. Total production volume will be about 39 million tons per year or 850,000 barrels of oil per day. The second project will keep the existing Tengiz plants full by lowering the flowing pressure at the wellhead and then boosting the pressure to the inlet requirements of the six existing processing trains. As a result of this modernization TCO will produce 1 million barrels per day by 2024.

Also, it is essential for us to have a minimal impact on the environment in all our production operations. We want our children to be able to breathe clean air, drink clean water and live in harmony with the environment. I live in Kazakhstan like other people do. We believe that affordable, reliable and green energy is essential to building a more prosperous and sustainable world. Therefore, one of our most important goals is to reduce our carbon footprint in our operations. Kazakhstan has ambitious plans on energy transition and have already taken active steps to meet the country's carbon reduction goals. I believe that together with our partners, RoK Government, and brilliant local talents we will continue contributing to the development of energy industry and prosperity of people of Kazakhstan.

— **What economy diversification projects does Chevron have Kazakhstan?**

— The pioneer in the production of polymer pipe products in Kazakhstan – Atyrau Polyethylene Pipe Plant – was launched by Chevron in 2003 as part of our commitment to diversify the economy of the newly independent country. This is the contribution of the corporation leading the development of the giant Tengiz field to the diversification of the Kazakhstani economy. Six production lines of the plant can produce 17,000 tons of polyethylene pipes per year. They are made of high-strength pipe-grade polyethylene such as PE-100 from



European and other manufacturers and are used in water supply, sewerage, and gas supply. Polyethylene pipes of APPP have always been famous for high quality, not only in Kazakhstan but also in the CIS countries. In 2021, the plant produced 9,000 tons of pipe products, which is three times the volume over the past five years. As of the end of 2022, 7,000 tons of pipe products have already been produced despite the worldwide economic challenges.

Over the past decade, Chevron has spent \$14.1 billion directly with local Kazakhstani businesses. This spending stimulates a virtuous cycle of economic activity across an extended supply chain, generating an additional \$1.4 billion in sales at local businesses every year. Over \$28.1 billion in sales at Kazakhstani businesses in the last 10 years has been prompted by Chevron activities.

Chevron and the Ministry of Energy of the Republic of Kazakhstan established the Chevron Direct Investment Fund Ltd (CDIF), an investment vehicle to support Kazakhstan's economy by investing into commercial local enterprises across various industries, including but not limited to manufacturing, works and services in oil and gas industry, environmental stewardship, information technologies, including digital technologies. The fund is valued at \$248.5 million.

— **We know that Chevron is also making investments into human capital, social projects, culture, and education. How projects for such investments are selected?**

— Chevron partners with local communities to enable human progress in four key areas: education, economic development, energy transition and healthcare. Since 1994, Chevron has contributed over \$450 million in social investment, initiating more than 300 projects with more than 30 community partners. In 2020 Chevron became one of the first and largest contributors in Kazakhstan to respond to the COVID-19 emergency with over \$20 million donation of medicines and equipment.

Since 1993, TCO has invested about \$2.7 billion to fund social projects and programs in Atyrau Oblast for the community and employees. In 2022, TCO has budgeted \$30 million for Egilik social infrastructure program, the majority of which will be spent on construction of kindergartens, schools and other social facilities in Atyrau Oblast as well as purchase of medical equipment for hospitals in Atyrau oblast.

All of these accomplishments support Kazakhstan's strategic plans and goals. We are proud to be a partner of Kazakhstan and remain committed to investing in the country's economic and human potential.

— **Please tell us about yourself, specifically about your background.**

— I've been with Chevron for almost 25 years, and three of those years from 2009 to 2012 I've spent here with my family – my wife Jennifer, and my daughters Hailey and Jordan. Both girls are now in the University, pursuing their dreams, but are still keen on visiting us in Kazakhstan. Over the years I've held multiple Chevron leadership roles across the UK, the US, West Africa, Eastern Europe and South-East Asia. And now for me it is both a pleasure and a privilege to re-join our office here in Almaty as Managing Director. I'm a Louisiana native, born and raised in New Orleans. Got my degree in Electrical Engineering from Louisiana State University.

— **What part of your role do you love most?**

— Working with people is the part of my role that I love most. Each day in our lives bring new and important challenges. Working with people to see the solutions they bring to these challenges reinforces to me the excellence that they demonstrate professionally and personally, each day.

— **What values are important to you in your role?**

— Trust is a critical enabler for any relationship to move forward and it is the key attribute to any high performing team. Diversity and Inclusion are critical factors, as everyone has a “voice” and ensuring people’s voices are heard enables them to be valued. When people feel included and valued, we all win.

— **Give us one word that describe you the best.**

— Most people would describe me as tenacious, for the reasons that I believe it is important to always persevere and finish the work undertaken, no matter what the challenges that are presented.

— **What personality traits make a good leader? What is your recipe for a successful career?**

— Trust, integrity, transparency, honesty, patience and inclusiveness – all critical traits. A recipe for a successful career, that is very personal to each individual. Success can be defined in many ways, for myself, it’s the ability to look back and see the work completed, impact it had and be fulfilled/satisfied with the outcome. The recipe for this is simply working to the best of my ability each day, engaging with my peers and team mates, being humble and open to others suggestions/ideas and committing fully to the plan we align upon.

— **What magazines and books do you read?**

— I am a voracious reader. I spend a minimum of an hour to two each evening dedicated to reading for two purposes. 1) to relax and take my mind off the tasks of the day 2) to learn. My Grandmother was a librarian and during my summers that I would spend with her, I would take half of my day and work in the library. Checking out books, racking books back to the shelves and administering the card catalogues (which many won’t know about any more, after the internet). Currently I am reading two books, Marcus Aurelius’s quotes (given to me by a close friend) and Isis Unveiled, by Helena Petrovna Blavatsky. I read the Brothers Karamazov in university a long time ago, and I will read it again in the near term. I like fiction as well, when fictional novels use historically accurate settings and times. As for magazines, I usually read technical journals like SPE and IEEE spectrum.

— **What do you like to do for fun?**

— I spent quite a bit of time with my Grandfather while I was growing up. I learned to love the land from my Grandfather. Hunting, fishing, farming – in my personal time, I spend a good deal of time working outdoors. As well, once upon a time, I was a very avid golfer. I stopped playing many years ago as I did not have time. I am going to make time to take up the sport again in 2023/2024. I very much enjoy spending time with my two daughters and wife, at the lake or the beach – anywhere there is water.

— **This is your second assignment in Kazakhstan. What can you say about country and its people?**

— I started my work as a Managing Director in Kazakhstan in early 2022, and this is my second assignment in this country. I was lucky to have worked here previously from 2009 to 2012 as EBU Deputy Managing Director. I was here when the TCO Second Generation Plant was launched. As for my career in the oil and gas industry, I have been with Chevron for 26 years. My portfolio includes global experience in Europe, Asia, Bangladesh and seven years of work in West Africa. Although I am native of the USA, I spent less time in my homeland than abroad. It is a great honor for me to work in Kazakhstan again, and I feel like am home here.

I have always been fascinated by Kazakhstan. As a young engineer, I read the company’s corporate magazines and dreamed of coming here to personally participate in development of the new country’s energy industry. After dissolution of the Soviet Union Kazakhstan needed to develop own economy. We hadn’t been present here, but we knew that we could support development of such a serious project as Tengiz field. Development of Tengiz started in 1980s and after few years, in 1993 production reached the level of about 1 million tons of oil. To increase production further, serious investments and new technologies were required. This is how our partnership started, which have been lasting for 30 years.

— **On a concluding note, what would you wish to our readers?**

— I would like to take this opportunity to emphasize the stable investment climate that exists in our country. Kazakhstan has established itself as an attractive destination for foreign investors, particularly in the oil and gas sector. The government has implemented various measures to create a favorable business environment, providing stability and certainty for investment activities.

One crucial aspect in developing such conditions for foreign investors is the significant role played by lawyers. Lawyers act as key facilitators in navigating the legal landscape, ensuring compliance with regulations, and protecting the interests of both investors and the host country. Their expertise and guidance are vital in establishing and maintaining a stable investment climate.

Lawyers in Kazakhstan contribute extensively to the development of a favorable business environment by providing legal advice, drafting contracts, and assisting in dispute resolution. They help foreign investors understand the legal framework, address potential risks, and ensure smooth operations within the country. Their expertise in international law, local regulations, and commercial practices is instrumental in building trust and confidence among investors.

I would like to express my sincere appreciation to the lawyers in Kazakhstan who actively contribute to the stable investment climate. Their dedication, professionalism, and commitment are pivotal in attracting and retaining foreign investments in our country. I would like to extend my best wishes to the readers of this magazine and wish continued success and professional growth in your endeavors to support and promote a thriving business environment in Kazakhstan.

— **Thank you for the interview**

30 YEARS OF SUCCESS



One fifth of the state budget revenue, one third of the total oil production of the country, tens of thousands of jobs. All of the above is a single enterprise – Tengizchevroil LLP.

This year, the Company celebrates its 30th anniversary. Since its foundation it overcame multiple difficulties, having increased production indicators by almost 30-fold. The agreement signed in the USA on April 6, 1993 by and between the Republic of Kazakhstan and Chevron Corporation did become a “contract of the century”, beneficial for both parties thereto.

During the years of operation at Tengiz Field, Tengizchevroil invested billions of dollars in production increase, observing its main principle – safety first. The Company continues investing in new projects and applying advanced technologies. For example, Second Generation Plant (SGP) using unique sour gas injection (SGI) technology was commissioned at the field in 2008.

The special gas compressor was manufactured by TCO’s order at Nuovo Pignone plant in Italy. This compressor can hold pore pressure above 600 atmospheres. Special high-tensile steel pipes were manufactured for gas injection.

During implementation of SGI/SGP projects, about 400 Kazakhstani companies received over four thousand orders. Moreover, to comply with the quality requirements, the Kazakhstani plants implemented new international standards and technologies, such as standards applicable to the production of high-pressure process vessels or steel structures.

Tengizchevroil arranged in advance the training of local personnel by investing over \$20 million. In summer 2003, a vocational training center was opened in Atyrau, where over five thousand people were trained and awarded international qualification certificates. Totally over 32.5 thousand Kazakhstani citizens worked in the project.

Growing together

In 1993, when TCO was established, there were practically no individual manufacturing enterprises in the region, while the demand for services was high. At that time, new opportunities appeared for small and medium-size businesses, and it can be said that Tengizchevroil made its contribution to the development of domestic manufacturers and suppliers of a very wide range of services.

In 1997, the Company launched the small business development program, designed to facilitate development of entrepreneurial initiative. TCO extended long-term non-interest loan as a start-up capital. Support was provided, first of all, to the enterprises whose products were in demand by the Company.





The strategic objective was to increase the number of small businesses, reducing the level of unemployment, ensuring employment of the population by creating new jobs and increasing the share of small business in the total volume of products produced. Due to this program, local entrepreneurs got an opportunity to build facilities to provide works and services to the population, government authorities, and other enterprises. Tengizchevroil invested over \$13 million into this program; over 1400 new jobs were created.

TCO notes that working on the projects of expansion and modernization of its facilities, it always provides for an opportunity to involve local business. For example, in 2003, Kazakhstani company Belkamit and Italian company FBM Hudson Italiana contracted with TCO to supply air heat exchangers within the scope of SGI and SGP projects; it was one of the largest orders for machinery products for this project.

Almaty and Petropavlovsk heavy engineering plants, as well as Imstalcon, NeftstroyService, Kentek, Ariadna, and others, were working and growing along with the Company.

In 2022, TCO spent 5.3 billion Tenge for goods and services produced in Kazakhstan. As of 1993, the Company's direct financial payments have amounted to 176 billion US Dollars, including 43.6 billion US Dollars for local goods and services.

Ships in the sea

It is interesting that the Kazakhstani content share and the competence of local contractors and specialists were growing with each new Tengiz project. The third phase of field development turned out to be even more extensive and included implementation of Future Growth Project (FGP) and Wellhead Management Project (WHPMP).

To provide engineering, material-technical and production services for FGP-WHPMP, 2276 Kazakhstani companies were selected, of which 1588 companies were successfully pre-qualified. As the result, over 630 contracts were executed with the Kazakhstani companies.

It is worth noting separately that infrastructure projects which were implemented for FGP and WHPM projects will help Kazakhstan to implement its other economic objectives.

For example, TCO built a new 76 km sea access channel to deliver modular goods by the Caspian Sea to Tengiz. The base for receiving cargos includes a terminal for unloading and storage of cargoes and an access road built at Prorva peninsula, 40 km off the Tengiz field border. The facility is managed by the Kazakhstani company TengizService.

Moreover, the national marine shipper Kazmortransflot (KMTF), in partnership with the Danish company Blue Water Shipping, was awarded a contract for building and operation of vessels to ship modules. In the forefront of FGP-WHPMP work, over 126 vessels were in the operation, 40 of which were built new or modified specifically for this project. KMTF managed marine shipments, while the Kazakhstani company Yersay built pre-assembled racks at its facility in the Mangistau oblast. The enterprise manufactured 75 pre-assembled racks.

Moreover, anticipating such scope of work, Tengizchevroil provided sponsorship and facilitated the opening of the Kazakhstan Marine Academy in 2012 on the basis of the Kazakh-British Technical University – the first higher educational institution in the history of the Republic training maritime personnel. The Academy is the only educational institution in the country that trains internationally recognized professional seafarers. Today, a 4-year

bachelor's program is available to both Kazakhstani and foreign applicants. The university annually enrolls up to 32 cadets to study both on a paid and free basis, getting state and corporate grants.

In general, TCO pays special attention to the education and training of qualified specialists. As they say: "If you give a man fish you will feed him for one day. Teach him to catch fish and you will give him a profession which will feed him for the rest of his life." During the period of implementation of the FGP-WHPMP project, Tengizchevroil paid up the training of over 25 thousand people who then worked in the Company's contractor organizations.

TCO notes that the value of the future growth projects is both in the increase of production volumes and long-term legacy of skills in the spheres of engineering, construction, and other technical professions for future major sectorial projects throughout the country. In addition, the Kazakhstani specialists and companies with working experience at Tengiz become competitive in the foreign markets, and already get orders or employment in foreign projects.

For the whole country

Although TCO's operations are based in Atyrau oblast, they bring economic benefit to almost all regions of the country. For example, the Company purchases pipe casing of the oil-field gage in Mangistau, lubricants – in Shymkent, security equipment – in the North Kazakhstan oblast, heating, ventilation and air conditioning services and pipe construction services – in Taraz. Funds for renting equipment are transferred to the West Kazakhstan oblast, for purchasing building materials and transportation of passengers by railway - to Aktobe, for services of pipe and railway transportation – to Astana. Thus, domestic business develops in many regions of Kazakhstan.

While in 1993 the share of local companies in TCO's procurement was 11%, by the end of 2022 the Kazakhstani content ratio at TCO reached 70%, being the highest result in the last six years. At that time, all subsoil users in the country's energy sector, including the uranium mining industry, procured Kazakhstani goods, works and services for \$11 billion. That is, the share of TCO was almost 33%. It should be noted that there are about 90 companies producing oil and gas in Kazakhstan.

The share of the Kazakhstani content (KC) in Tengizchevroil procurement in 1993-2022

| Year | million \$ | KC share, % | Year | million \$ | KC share, % |
|------|------------|-------------|------|------------|-------------|
| 1993 | 27 | 11 | 2008 | 1329 | 61 |
| 1994 | 87 | 22 | 2009 | 1187 | 51 |
| 1995 | 22 | 20 | 2010 | 1354 | 68 |
| 1996 | 50 | 28 | 2011 | 1569 | 65 |
| 1997 | 85 | 24 | 2012 | 1797 | 60 |
| 1998 | 116 | 19 | 2013 | 2301 | 59 |
| 1999 | 151 | 25 | 2014 | 2422 | 50 |
| 2000 | 287 | 34 | 2015 | 2387 | 51 |
| 2001 | 297 | 36 | 2016 | 1942 | 40 |
| 2002 | 415 | 37 | 2017 | 2522 | 34 |
| 2003 | 564 | 42 | 2018 | 3546 | 36 |
| 2004 | 689 | 35 | 2019 | 4641 | 41 |

| Year | million \$ | KC share, % | Year | million \$ | KC share, % |
|------|------------|-------------|------|------------|-------------|
| 2005 | 787 | 42 | 2020 | 3512 | 53 |
| 2006 | 1074 | 58 | 2021 | 3559 | 68 |
| 2007 | 1221 | 54 | 2022 | 3709 | 71 |

Experts distinguish three levels of economic contribution of TCO to the country's development. The first level or direct economic effect is revenue received by Kazakhstan's economy in connection with TCO's operations and its direct payments to local suppliers. The second level or indirect economic effect is through an expanded supply chain at the level of subcontracting companies. And, finally, the third level is induced economic effect – proceeds to the economy as the result of consumer activity of TCO's employees and expansion of the supply chain. All of the above produce powerful economic effect on the development of the country.

The amount of TCO's direct financial payments to the Republic over 30 years of its operation exceeded \$176 billion. It includes payroll payments to the Kazakhstani personnel, procurement of goods and services of the domestic manufacturers and suppliers, payments to the state-owned enterprises, payment of dividends to the Kazakhstani partner, as well as payments in the form of taxes and royalty to the state budget.

During the years of its operation, the Company created more than 300 thousand jobs all over Kazakhstan. Having said that, it should be noted how scrupulous Tengizchevroil has been in complying with safety regulations and taking care of the health of its employees. The Company has implemented most advanced production management technologies, high operational standards and shares its experience with its contractors, thus stimulating their growth and development.



A MAN WORTH TO BE REMEMBERED

Ayan Khalitovich Urakov



I dedicate this short essay to my colleague, friend and no ordinary real man, Ayan Khalitovich Urakov. Unfortunately, he passed away so unexpectedly leaving disconsolate his colleagues and friends. It can be hardly believed that he will not be with us; we will not hear his heartfelt songs to his own guitar accompaniment, we will not be together at our professional events, we will not hear his speeches, we will not see him in a good mood among his close friends and colleagues. He passed away quietly, quickly, without causing trouble to anyone, without bidding farewell. However, he could have remained with us for many years enjoying life because his muse Clara Muftakhidenovna, one of the honored representatives of the cultural community of the Atyrau oblast, was beside him; as well as his wonderful son and daughter and grandchildren; interesting work giving professional satisfaction ...

Ayan Khalitovich lived an interesting and beautiful life; he was a very careful and mindful husband, father and grandfather, a loyal friend for his colleagues and a man important for his relatives and close friends sharing a spiritual affinity with him. He is and remains one of the respected people of the Atyrau oblast, and a recognized professional and authority in the legal community of the country.

Born in a rural area, like many his peers, he started his career as a worker and spent two years before the military service as a metalworker at the Guriev oil refinery. After that, he did his military service in South Sakhalin; upon demobilization he began working as a radio operator in the Guryev air squadron.

Here I would like to note the similarity in our biographies, which obviously helped us establish good friendly and professional relations, and we were very attentive to each, valued and cherished this relationship. I was also born in a village; after graduation from the secondary school, I worked as a metalworker at a grain receiving station, then I did my military service in the marine regiment of border troops in South Sakhalin; after demobilization and prior to enrollment to the legal department of the higher educational institute I worked as a driver at the same enterprise, where I completed my workman job. The pages of the history of our working careers are identical; we were practically of the same age, he was one year and two days older than me ... We entered the higher

educational institution in the same year, he was enrolled in the legal department of the S.M. Kirov Kazakh State University, and I was admitted to the Judicial and Prosecutorial Department of the Sverdlovsk Law Institute, we graduated in the same year being awarded a lawyer graduation diploma. I am deliberately writing this, because the two of us went through the same school of life; I think that the years of professional development moved us closer causing mutual respect and trust.

Being a student, Ayan Khalitovich started his legal practice first in one of the production subdivisions of Kazneftegasrazvedka, then as an attorney of the Guryev Oblast Bar Association. This circumstance is an evidence of Ayan's outstanding personality, high responsibility and professional maturity; it helped him later join the prosecution offices of the Republic of Kazakhstan.

His talent was well revealed in the prosecution offices, so to say professional disposition to serve law and justice. Since 1980 through 1995, Ayan Khalitovich had held the positions of Assistant Prosecutor of the Atyrau Oblast, Investigator of the Guryev City Prosecutor's Office, Criminal prosecutor of the Oblast Prosecutor's Office, Prosecutor of the Makhambet District and City of Guryev.

As evidenced by his colleagues, during his work as a prosecution investigator, he demonstrated most brilliantly his knowledge and remarkability. The professional "portfolio" of Ayan Khalitovich contained a number of successfully detected offenses, cases revealing a talent of a real "professional investigator"; he became a legend among prosecution investigators. Based on the materials of criminal cases investigated by Ayan Khalitovich, even two documentary films were shot – Revenge (Kazakh - «Кек») and Disappearance (Kazakh - «Жоғалу»). Later Ayan Khalitovich, Senior Adviser to the Prosecutor, was awarded the title of Honorary Prosecutor of the Republic of Kazakhstan, he was proud of this title to the end of his life.

1995 was the year when Ayan Khalitovich suddenly changed his professional life and started a private business career in ANACO JSC, first as the only lawyer and then as company's Vice President for Legal and HR affairs. It was big trust on the part Sagat Kazhkenovich Tugelbayev, the owner and founder of the company, the outstanding statesman and public figure, the well-known and successful businessman. Since 1995 to the last days of his life, Ayan Khalitovich successfully performed his professional duties facilitating development of the company in oil and gas industry. Given his honest and responsible work in the new industry, Ayan Khalitovich had been repeatedly awarded with medals and merit certificates of the Ministry of Energy of the Republic of Kazakhstan, the Ministry of Justice of the Republic of Kazakhstan, KazEnergy Association.

I got acquainted with Ayan Khalitovich in the late 90s. Boris Tazhigariyevich Cherdabayev, one of the honorable representatives of the oilmen dynasty, introduced us to each other. At that time, I worked as the General Manager of the Legal Department of the joint Kazakh-American company Tengizchevroil (TCO) and lived in Atyrau. We struck up a friendship immediately and kept these sincere relations throughout all these years... We started family communication, attended our common family and professional events, those were golden pages of our life.

Subsequently his son Zhalgas joined TCO's Legal Department headed by me, and in a short period of time he won respect and recognizance of his colleagues. As the Kazaks say "A man of honor always finds his way in

REMEMBER...

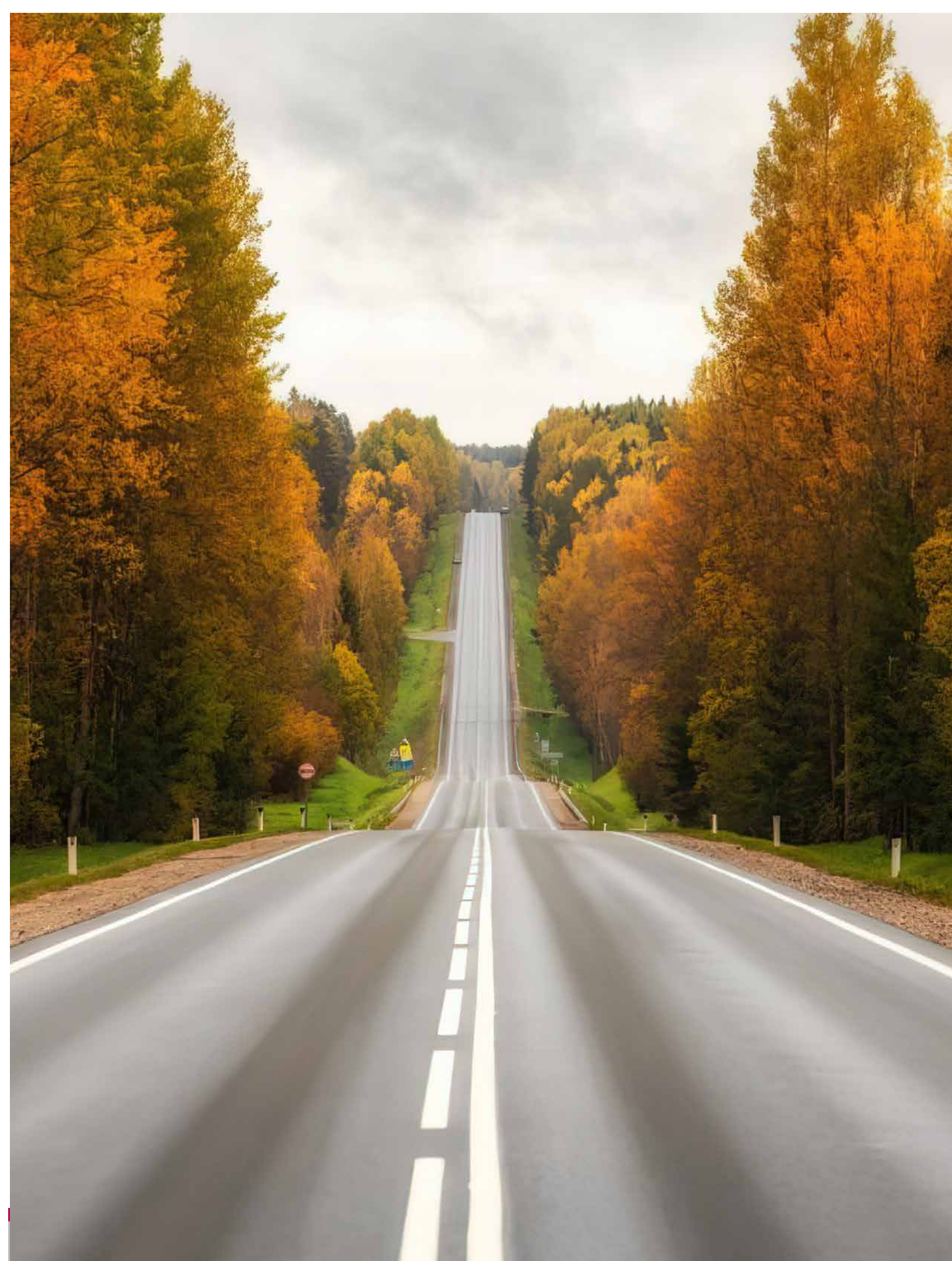
life” (Kazakh – “Тегі бар адам өз жолын табады”), so Zhalgas found his professional path and to date he has been successfully working in the legal department of Eurasia Business Unit of Chevron, the main founder of TCO. Personal development received by Zhalgas in the family, good academic education, zeal and responsibility as well as the example of his father was a reliable basis for his professional career. I know that Ayan Khalitovich was always proud of the successes of his son and daughter, because they followed in his footsteps for the benefit of the Urakovs big family.

Being ANACO Vice President and practically Head of the company’s legal service, Ayan Khalitovich actively participated in the activities of the legal community of Kazakhstan. He was one of the founders of the first in Kazakhstan professional legal association Kazakhstan Petroleum Law Association (KPLA); for many years he was a member of the Management Board of this organization. Ayan Khalitovich supported on a permanent basis the conduct of the annual Atyrau International Legal Conference, which became a recognized forum expected by the legal, petroleum and scientific communities of the country. For the purposes of this conference and publication of the digest of this forum, and due to the efforts of Ayan Khalitovich, ANACO provided permanent sponsorship to KPLA. This was the element of Ayan Khalitovich to whom the interests of the legal community were not alien, his entire activity proved his leadership among us, lawyers, who recognized and respected him.

The last meeting was on April 26, 2019. In Atyrau there was held a conference dedicated to my 65th anniversary. Ayan Khalitovich was sick then but he could not miss that day and came to the forum and was one of the first to congratulate me and gave a present to me – a Kazakhstani gold coin. Five years earlier at my 60th anniversary, Ayan Khalitovich gave me an Australian gold coin, because he knew my hobby - collecting gold coins. Those two coins I keep as a token of the kind and man of heart man. We did not meet afterwards, only called on holidays and other important events, then the hard times of pandemic caused by the spread coronavirus COVID-19 unknown to the mankind. At these times Ayan Khalitovich passed away; regardless the existing danger I left Almaty for Atyrau to attend a funeral, because I could not but pay last respects to the honorable man. Having attended a funeral repast, I flew back and in two days “fell sick” affected by coronavirus and stayed in bed for almost two months and a month under quarantine. The Almighty helped me to be up; I overcame this illness, because his help came in the circumstances where I performed my duty before Ayan Khalitovich and bid him a farewell in complicated living conditions. As the Kazakh saying goes: “Ayan’s spirit guards me.” (Kazakh - “Аян марқұмның аруағы мені қорғады”) ...

Concluding this short essay I would like to note that memory of Ayan Khalitovich will always stay in our hearts; we will remember his good deeds which are continued by his children serving law and justice.

Zhumageldy Yelyubayev
Friend and colleague



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Good cheer, friends!!!

- *Victim, do you recognize a person who stole your car?*
- *Your Honor, after his lawyer's defense I am not sure whether I had a car ...*

The most significant invention in the history of the Mankind was written contract. It allows people to jot down the paper all reasons why they do not trust each other.

A lawyer meets with a prisoner defendant:

- *I have two news for you: a good one and a bad one. Which one should I start with?*
- *The bad one.*
- *The analysis of the blood stains on the victim shows that it was your blood.*
- *Then what's the good news?*
- *All blood parameters: hemoglobin, cholesterol, and sugar are normal!*

- *Oh, Attorney, I don't know how to express my gratitude to you!*
- *My dear friend, it's not a problem anymore since mankind invented money!*

Hiring a lawyer. Your task for the probationary period will be to fire the previous one on legal grounds.



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