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Improvement of administrative approaches to subsoil state management in the Republic of Kazakhstan

R. N. Baimishev

Ministry of Industry and Infrastructure Development of the Republic of Kazakhstan,
Nur-Sultan, the Republic of Kazakhstan

Abstract: Mineral resource base of the Republic of Kazakhstan, being as the basis of its economy, plays a special role not only in sustainable development of the country, but also in the formation of successful international relations. The paper substantiates the direction of the mining and metallurgical complex development in the Republic of Kazakhstan towards solving the problem of increasing the country's long-term competitiveness. It was demonstrated that achieving these goals will allow building the potential for consistent and secure participation of the national economy in market interaction with leading global partners on mutually beneficial terms. At the same time, despite forecasted promising geological data, significant excess of the scope of mining work over that of exploration is observed in the Republic of Kazakhstan. It is also shown that the share of investments in geological exploration in the total investments in the mining sector is insignificant. The major part of the funds is invested in mineral extraction activities. In this connection, the paper proposes ways to improve administrative approaches to subsoil management in the Republic of Kazakhstan when granting subsoil use rights, in order to eliminate barriers for investors. The proposed improvements for the state subsoil management can have positive effect: investment growth due to improving the administrative approaches in the Republic's state subsoil management, ensuring transparency of information, supporting new standards, a simplified procedure for obtaining subsoil use rights (licensing); reducing corruption in the field of geology and subsoil use and reducing labor costs for the implementation of state functions through the creation of a modern geological infrastructure and the use of innovative opportunities in the implementation of supervisory functions by the competent authorities; ensuring fair returns for the government from taxes, as well as obtaining fair returns by investors.

Keywords: mineral resources, administrative approaches, state management, licensing of subsoil use, competitiveness of the state, international standards, information systems for subsoil use, balance of natural resources, investment attractiveness of mining industry

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Совершенствование административных подходов государственного управления недрами Республики Казахстан

Р. Н. Баймишев

Министерство индустрии и инфраструктурного развития Республики Казахстан,
г. Нур-Султан, Республика Казахстан

Аннотация: Минерально-сырьевая база Республики Казахстан – как основа ее экономики − играет особую роль не только в стабильном развитии страны, но и в формировании успешных международных отношений. В работе обоснована направленность развития горно-металлургического комплекса Республики Казахстан на решение задачи повышения конкурентоспособности страны в стратегической перспективе. Показано, что достижение этих целей позволит сформировать потенциал для последовательного и гарантированного взаимодействия с ведущими странами мира на выгодных для республики условиях. При этом, несмотря на прогнозируемые перспективные геологические данные, в Республике Казахстан в настоящее время зафиксировано значительное превышение добычных работ над разведочными. Показано также, что доля инвестиций в геологоразведку от общего объема инвестиций в горнорудный сектор – незначительная, основная часть инвестируется в добычу полезных ископаемых. В связи с этим в работе предложены пути совершенствования административных подходов к управлению недрами Республики Казахстан при предоставлении права недропользования с целью исключения барьеров для инвесторов. Предлагаемые изменения по совершенствованию государственного управления недрами могут дать положительный эффект:

рост инвестиций за счет совершенствования административных подходов государственного управления недрами республики, обеспечения прозрачности информации, поддержки новых стандартов, упрощенного способа получения прав на недропользование; снижение коррупциогенности в сфере геологии и недропользования и сокращение трудозатрат на реализацию государственных функций за счет создания современной геологической инфраструктуры и применения инновационных возможностей при реализации контрольных функций компетентных органов; обеспечение справедливой доходности для государства от поступающих налогов, а также получение инвесторами справедливой прибыли.

Ключевые слова: минеральные ресурсы; административные подходы, государственное управление, лицензирование недропользования, конкурентоспособность государства, международные стандарты, информационные системы недропользования, баланс природных ресурсов, инвестиционная привлекательность горной отрасли

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1. Introduction. Mineral resource base of the Republic of Kazakhstan (RK) is the basis for the country's economy development, political stability, and prosperity of the state as a whole. Currently, in the context of tough international competition, mineral resources of Kazakhstan play a particularly important role in sustainable economic development of the country and the formation of successful international relations.

Increasing competitiveness of the Republic of Kazakhstan in the international arena in the struggle for raw materials is possible through improving the mechanisms of legal regulation of this sector. Since the mining sector is highly risky, it is necessary to switch to effective international methods of state management of subsoil resources of the Republic of Kazakhstan.

In this regard, the head of state N.A. Nazarbayev, in the national plan "100 concrete steps", identified the primary tasks in the field of geology and subsoil use:

- introduction of a simplified contracting method for all types of minerals using the best world practices;

- increasing transparency and predictability of the subsoil use sphere through the introduction of the international system of reporting standards for solid mineral reserves CRIRSCO.

In pursuance of these provisions, on December 27, 2017, the Republic of Kazakhstan adopted the Code "On Subsoil and Subsoil Use".

The main prerequisites for reforming the mining legislation were the condition of the mineral resource base and the insufficient level of investment in the industry.

As known, it is possible to replenish the balance of resources due to geological exploration at the expense of state, quasi-state, or private investments. Taking into account the necessary costs in such a risky area of activity as geological exploration, the way of attracting private investment was selected. Therefore, the main goal of the ongoing reforms can be formulated as follows: "Replenishment of the country's mineral resource base through significant increasing attractiveness of the conditions (regulatory and economic framework) for exploration and production of solid minerals."

To achieve this goal, the following tasks were determined within the framework of the Code:

- creation of conditions for the emergence of junior exploration companies;

- establishing simple, predictable, transparent, and stable conditions for exploration and production of solid minerals;

- elimination of state regulation of technical and economic issues of subsoil use, including estimation of mineral resources and reserves;

- introduction of an electronic form of communication between the state and the industry, including the choice of a subsoil plot, filing applications and issuing licenses (contracts for subsoil use in Kazakh legislations), sending notifications;

- strengthening the requirements on mine closure to ensure environmental safety of the country.

2. Analysis of international experience in regulating the sphere of subsoil use and formation of the concept of the Code of the Republic of Kazakhstan "On subsoil and subsoil use"

It should be noted that when developing the Code, international experience was studied in detail on the basis of a year and a half analysis and recommendations of the World Bank, OECD, Dundee Institute, EBRD, SOFRECO. Based on the study findings, the experience of Australia was revealed as the best world experience in subsoil use regulation [1].

The peculiarity of the Australian approaches lies in the transparency and simplicity of the procedures for granting subsoil use rights, which are the standard of investment attractiveness in global mining sector. Countries that have implemented the Australian methods in their subsoil use legislation have achieved a significant increase in investment in the industry: Peru, Canada, Chile, Ecuador, Mongolia, Nigeria, Mozambique [2–4]. All these countries have the highest rating of attractiveness of investments in subsoil use [5–7]. For example, the capitalization of the Canadian Stock Exchange only in the part of junior companies is more than 58 billion USD. Almost all the largest mining companies in the world operate in Australia, the number of mining companies has reached 15 thousand, more than 23.5 thousand licenses have been issued, 27 % of the country's territory are covered by exploration (for comparison, only 600 contracts have been concluded in Kazakhstan) [8–11]. All this provide new jobs, discovery of new deposits and development of related industries.

According to the findings of the McKinsey report, in the event of commencing intensive geological exploration in Kazakhstan, at least 15 world-class deposits, as well as new mining provinces, are forecasted to be discovered.

In this regard, in order to ensure significant inflow of investments into geological exploration, the introduction of a licensing procedure for granting subsoil use rights with annually increasing lease rate on the basis of the “first in, first out” principle (FIFO) was chosen as a key innovation in the field of subsoil use [12, 13].

The main attraction for investors is that, in contrast to the previously established duration of procedures for granting exploration rights of 540 days, the new Code provides for exploration licenses to be issued within 10 working days.

Granting subsoil use right (licensing) based on the FIFO principle implies division of the territory of the Republic of Kazakhstan free from subsoil use into blocks with an area of no more than 1.8 km^2. A license can be issued for 10 blocks at once, but it will be necessary to comply with the requirements for the minimum investment in exploration or production, the size and breakdown by years of which are defined in the Subsoil Code, as well as to pay rent for each block. These provisions will not allow unscrupulous subsoil users to hold the territory without investing the required amount of investment.

In order to stimulate implementing exploration, a progressive rental rate has been established at the exploration stage, whereas fixed rate has been established at the production stage. All this

stimulates comprehensive exploration of the contract (license) area in full (now, in the country, there are contract areas of thousands of square kilometers, in which, in fact, work is being carried out in 10 km^2). And most importantly, large-scale, high-quality and detailed geological exploration of Kazakhstan will be ensured to reach high level of exploration maturity (for example, as yet Kazakhstan's exploration costs per 1 km^2 are only $ 3; whereas, in Australia, the costs are $ 167; in the USA, $ 87; in Canada, $ 203; in Russia, $ 25). That is, over the past decades, investments in geological exploration did not ensure replenishment of the Kazakhstan's reserves [14–16].

Particular attention should be paid to a new document, which is provided for in the Subsoil Code, the Program for State Subsoil Fund Management of the (PSSFM). The purpose of the PSSFM is to manage the state subsoil fund systematically, efficiently, and publicly. The PSSFM establishes the main directions of state policy in the field of subsoil management, and also defines [17, 18]:

- territories and subsoil plots within which subsoil use rights are granted on the basis of an application, taking into account the types of subsoil use and minerals, as well as the powers of the competent authorities;

- territories and subsoil plots within which subsoil use rights are granted on the basis of auctions or tenders;

- priority directions of the state policy on geological exploration, indicating the territories and corresponding subsoil plots.

In addition, a conceptual innovation of the Code is the provision of open access to geological information and its digitizing. This will allow implementing in full the Australian model in the field of subsoil use and will significantly improve the investment environment in the field of subsoil use in Kazakhstan.

The Code "On Subsoil and Subsoil Use" guarantees an unconditional transition from the exploration stage to the production stage in case of discovery of a deposit. This measure will provide investors with confidence in the return on investment in the exploration.

The only condition for obtaining a production license when shifting from the exploration stage will be the environmental approval of the project documentation.

The Code of the Republic of Kazakhstan "On Subsoil and Subsoil Use" provides for shifting to international standards for estimation of resources and reserves of solid minerals.

Taking into account significant differences between mineral mining and oil-and-gas sectors in terms of specifics, labor intensity of work and capital investment, different approaches have been laid in the regulation of subsoil use for solid minerals, hydrocarbons (HCs), industrial minerals, etc.

It should be noted that the Code revises the current principles for the formation of a list of common minerals, taking into account world experience.

Besides, in Kazakhstan, the procedure for subsoil use consequences remediation has been improved through introducing new instruments as security for obligations on the remediation, such as guarantees, pledges and insurance. The security for obligations on the remediation is in favor of the Republic of Kazakhstan acting by the governmental body that granted the subsoil use right (issued the license). At the same time, the collateral amount is determined for prospecting and artisanal mining based on the number of hectares, at the exploration stage, based on the number of blocks, and at the mining stage for the first three-year period it is calculated on the basis of the market value of the work and is subject to updating every three-year license period.

The Code "On Subsoil and Subsoil Use" should become a breakthrough legislative act aimed at introducing the principles and approaches adopted in international practice, ensuring transparent and understandable methods of government regulation, reorienting the government machinery to support of investments.

Implementation of the new approaches will contribute to the inflow of new investments into the subsoil use sector. This will subsequently contribute to the creation of additional jobs, regional development, strengthening of economic stability and raising competitiveness of the Republic of Kazakhstan in the international arena.

3. Investment attractiveness of the mineral resource base of the Republic of Kazakhstan and the system of governmental subsoil management

In order to create a developed market economy, one of the tasks facing all states of the world is to build an effective system of state management of the resources they possess. In this regard, increasing the competitiveness of the Republic of Kazakhstan in the international arena in the struggle for raw materials is possible through the improvement of mechanisms and approaches to state management of subsoil [19–21].

As of 01.01.2019, the State Fund of Mineral Resources of the Republic of Kazakhstan is characterized by low investment attractiveness (underexplored deposits, lack of infrastructure, falling world prices for certain types of raw materials, complicated mining and geological conditions, high capital intensity, long return on initial investments, high operational inertia, low liquidity of the residual fixed assets of a mining enterprise, contradictions in the regulatory framework).

All of the above indicates the need to revise the current approaches to the management of the sector, including through the development of an effective governmental strategy for the sector development and increasing funding for exploration, being the cornerstone of the industry, due to which the mineral resource base of Kazakhstan will be replenished.

Thus, in order to bring the industry out of the crisis, it is necessary to improve the system of state management of the industry, which requires not just a modernization, but radical changes.

Stimulating prospecting and exploration for replenishing the mineral resource base of the Republic of Kazakhstan and the discovery of new deposits through attracting private investment is possible if the following proposed measures to improve the state management of subsoil in the Republic of Kazakhstan are implemented: reforming the institutional arrangements of the subsoil state management; updating strategic programs for subsoil management; creation of up-to-date geological infrastructure; improvement of administrative approaches to the Republic of Kazakhstan's subsoil state management; application of innovation opportunities in the implementation of the control functions of the competent authorities; improvement of the taxation environment on subsoil use issues.

Taking into account exploration potential of the mineral resource base, country location, economic components, market demand, infrastructural factors and many other aspects, states form a subsoil management system and develop appropriate principles of legal regulation of subsoil use. In Kazakhstan, the following fundamental principles of regulation of this industry have been formed, which determine the specifics of the subsoil state management: rational management of the state subsoil fund; ensuring environmental safety when using subsoil; availability of information in the field of subsoil use; payment for subsoil use; conscientiousness of subsoil users; stability of subsoil

use legal framework. The above principles were developed by the state to ensure sustainable development of the mineral resource base of the Republic of Kazakhstan, economic growth of the state and the welfare of the community.

In addition to the subject and principles, the subsoil state management is characterized by its inherent system, formed from various governmental bodies, endowed with the appropriate powers and functions for subsoil management.

Currently the functions of managing state property in the field of subsoil use are entrusted with the different governmental bodies depending on the mineral type: Ministry of Energy of the Republic of Kazakhstan – hydrocarbons and uranium, Ministry of Industry and Infrastructure Development of the Republic of Kazakhstan – solid minerals, Ministry of Agriculture – groundwater, local executive bodies of regions and cities of republican subordinance – industrial minerals, Ministry of Geology, Ecology and Natural Resources – issues of development of geology.

At present the state acts as a subject of management, manages its property – the governmental subsoil fund, offering a subsoil plot for granting subsoil use rights and issuing licenses (contracts) for subsoil use. State property as an object of management is granted to investors for temporary use, and the fact of granting the right to use is formalized with a special state permit in the form of a license (a contract). The license sets out the rights and obligations of investors; the conditions for subsoil use are determined at the legislative level.

As a result, the process of managing the state subsoil fund is carried out through the system of licensing (permitting) and restrictive measures aimed at solving tactical tasks of the state and achieving targets (benchmarks) determined by the mineral resource base, long-term and medium-term programs for the industry development and the country's economy as a whole. In this case, the objects of strategic management are objects from both allocated and unallocated subsoil funds.

Based on the above, the system of subsoil state management can be schematically shown as follows (Fig. 1).

Among the factors that determine the conditions and outputs of the subsoil use system functioning, an important role is played by the state management of the system activity, the efficiency of which determines the level of use of the territory's resource potential.

Stimulating prospecting and exploration for replenishing the mineral resource base of the Republic of Kazakhstan and the discovery of new deposits through attracting private investment is possible on condition of improving the whole set of the above component-areas of the subsoil state management in the Republic of Kazakhstan.

In this regard, by analogy with the experience of Western Australia, Canada and the United States, being the countries that have the best achievements in managing the subsoil use, it is proposed to improve the approaches to the subsoil state management in Kazakhstan in order to address the following tasks:

- attracting private investment in prospecting and exploration by simplifying and improving procedures for junior companies and increasing investments in prospecting and exploration of the country's territory, including improving the administrative approaches to subsoil state management in the Republic of Kazakhstan when granting subsoil use rights (licensing) in order to eliminate barriers for investors, namely: simplifying the requirements for submitting an application for obtaining a subsoil use right (licensing) in two languages (Russian and Kazakh), as well as in hard copy; simplifying the requirements for confirming the applicant's financial capabilities, etc.;

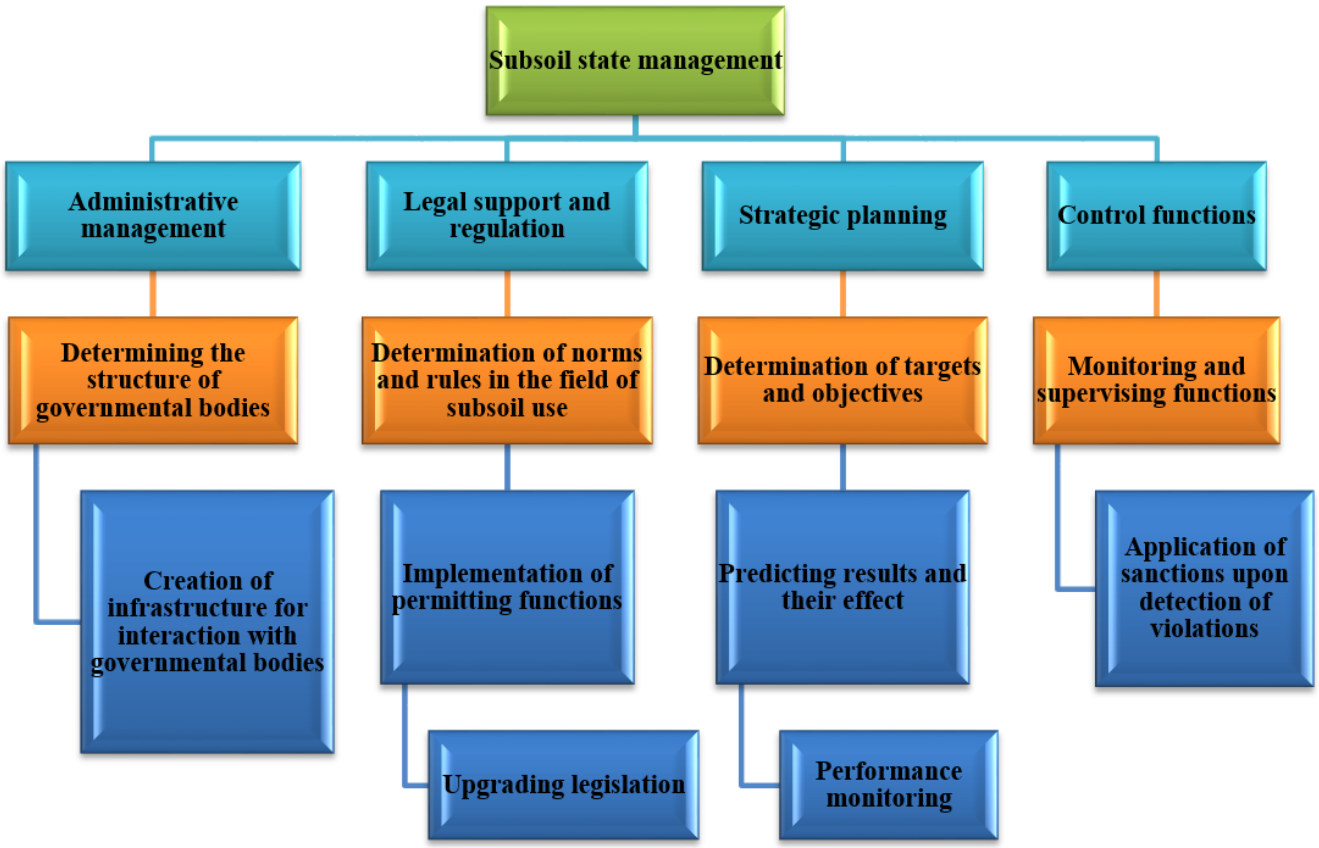

Fig. 1. Subsoil state management system in Kazakhstan

- development of geological infrastructure, as well as reorientation of the Geological Service of Kazakhstan to strengthening preliminary research, mapping, analysis of historical data on an ongoing basis;

- creation of the National Database of Mineral Resources using modern innovative approaches and opportunities. This will allow automating the process of providing public services, expanding the list of innovative services, improving informing the population in the process of making political decisions, building a targeted approach in public administration, and introducing a system of public examination of government decisions;

- exemption of geological exploration from tax burdens to increase the competitiveness of the subsoil use sector of Kazakhstan at the world level.

Domestic approaches to taxation of subsoil users, in comparison with the leading countries in the field of subsoil use, are assessed by investors and international experts as very complicated and uncompetitive. This confirms that Kazakhstan requires a conceptual revision of the taxation system that will contribute to implementing effective approaches in subsoil state management and create a favorable environment for the mining industry development, stimulate the inflow of new investments and, correspondingly, increase the contribution to the country's economic development.

In this regard, the following changes in the taxation regime for subsoil users in the Republic of Kazakhstan are proposed:

- eliminating of the value added tax (VAT of 12%) when conducting prospecting and exploration of minerals, since the first product in subsoil use that has a market value is mineral raw materials, which are subject to taxation in accordance with special payments of subsoil users;

- to allow classifying costs for prospecting and exploration as tax deductions if the prospecting and exploration findings are not subsequently used in the following mining activities. Besides,

to allow, by analogy with the mechanism provided for HCs, to classify costs for unsuccessful exploration as tax deductions;

- in connection with the shift to the international standards for mineral reserve estimation, it is recommended that the current system for determining the mineral extraction tax be replaced by royalties, applying the best world practice of Canada, Bolivia, Australia, since this type of taxation of mining activities has a number of advantages: it stimulates subsoil users to create multi-process stage productions; facilitates administration; has a positive effect on attracting investment.

The analysis allowed developing a mechanism for improving the administrative approaches to subsoil state management in the Republic of Kazakhstan.

The target set by the government of the Republic of Kazakhstan to implement the reforms through adopting the Code of the Republic of Kazakhstan "On Subsoil and Subsoil Use" and improving the investment environment, reducing administrative and bureaucratic barriers in obtaining subsoil use rights (mineral rights) has obviously been achieved. This is confirmed by the fact that for an year of the Code and the State Subsoil Fund Management Program being in force the number of mineral exploration licenses issued reached 400. This figure is very impressive for the specified period, especially in comparison with subsoil use contracts for minerals concluded over 25 years of the Republic of Kazakhstan independence in the amount of 538 pcs.

However, it should be noted that the competent authority received about 1,404 applications for mineral exploration licenses.

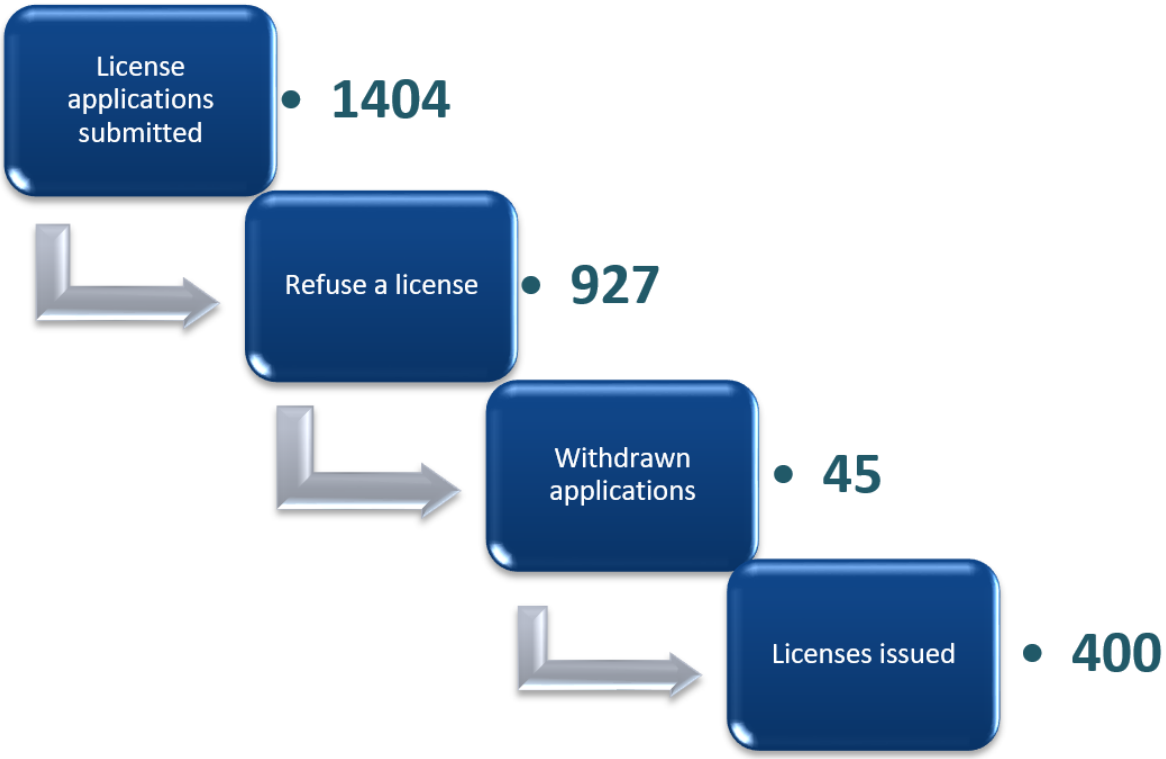

Fig. 2. Number of submitted and examined applications for mineral exploration licenses in Kazakhstan

Fig. 2 shows high percentage (66 %) of refusals to grant the right to use subsoil (licensing), the reasons for which can be considered as constraining factors for attracting private investment in exploration:

- the requirement to provide confirmation that the applicant has financial capabilities sufficient to conduct subsoil use operations;

- the requirement to submit an application for license in soft and hard copies;

- the requirement to provide the documents (the application and attachments to it) in Russian and Kazakh languages;

- the requirement for the presence of the requested subsoil plot in the PSSFM.

The fact that the applicant has financial capabilities sufficient to conduct subsoil use operations is mainly confirmed by submitting a statement of the balance and movement of money in a bank account. At the same time, the Code toughened the requirements for this statement, since it is necessary to show the permanent availability of funds (every day) during the month preceding the date of application. That is, in fact, the statement must be issued the day before the application is submitted, and this requirement in some cases makes it impossible for subsoil users from regions remote from the capital of Kazakhstan (the location of the competent authority) to submit an application.

A negative point in this case is also the requirement to submit the applications in hard copies, which requires physical delivery of the documents to the office of the competent authority and, thus, entails labor and material costs for the applicants. The same negative consequences are caused by the requirement to submit the application and all supporting documents attached to it in two languages (Kazakh and Russian).

Particular attention in the subsoil management of should be given to the PSSFM formation. This specified program document (PSSFM) is included into the Subsoil Code to the end that managing the state subsoil fund to be systematic, efficient, and public. At the same time, the established practice shows the unsystematic character of the formation of this legal act. Until now, the Committee for Geology carried out the PSSFM formation exclusively by collecting and processing (verification of the fact that a subsoil plot is free and no constrains on the subsoil use are imposed) applications for the inclusion of a subsoil plot in the PSSFM for the possibility of issuing a license.

This practice confirms weak exploration maturity of the country's territory and the insufficient competence of the authorized bodies when developing the program. This circumstance has developed due to the ineffective structure of the government bodies authorized to manage the subsoil, the lack of the necessary infrastructural information system in the field of subsoil use, enabling to visually trace the ongoing changes and plan further stages of the industry development. In this regard, it is proposed to revise the above requirements for applicants: eliminate the reasons that prevent issuing licenses for subsoil use, and create the necessary infrastructure in the field of geology and subsoil use.

4. Conclusions. Thus, introduction and implementation of the proposed changes to improve approaches to subsoil state management create conditions for:

- investment growth due to the improvement of administrative approaches to subsoil state management in the Republic of Kazakhstan, ensuring transparency of information, support of new standards, simplified procedure of obtaining subsoil use rights (licensing);

- reducing corruption in the field of geology and subsoil use and decreasing labor costs for im-

plementation of state functions through the creation of modern geological infrastructure and the use of innovative opportunities in the implementation of supervising and control functions of the competent authorities;

- ensuring fair return for the state from taxes, as well as obtaining fair return on investment for the investors.

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