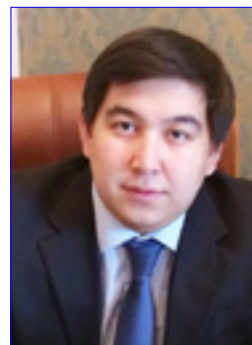




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## **PROBLEMS OF THE PERMIT SYSTEM IN THE REPUBLIC OF KAZAKHSTAN RELATED TO ENTREPRENEURIAL ACTIVITY (Проблемы разрешительной системы предпринимательской деятельности Республики Казахстан)**

### **Introduction.**

In Kazakhstan, certain entrepreneurial activities are controlled by the government and it is necessary to obtain permission for such activities. The types of permissible documents include licenses, accreditation certificates, certification, determinations, approvals, and other documents. Permissible documents grant individuals and legal entities the right to conduct certain activity or carry out certain operations.

The permit system is a complex social and legal phenomenon. On the one hand, permission is a sequence of actions targeting the granting of permission to an economic actor for conducting certain entrepreneurial activity, and, on the other hand, it is a sequence of supervisory activities carried out by authorized public bodies with respect to the economic actor to ensure its compliance with certain requirements and conditions dedicated to protect social and economic security.

The government warrants freedom of entrepreneurial activity and ensures its protection and support. One of such warranties is the prohibition of intervention of the government or its executive bodies in the business activity of an enterprise, except for cases stipulated by law and within the competence of the bodies.

In the course of the economic reform of 1990s and transition to the free market economy, the system of the economy administration changed drastically. The regulatory bodies instead of setting plans by command from higher levels, assigning

objectives and strict controlling their fulfillment, now influence the economy through loans, taxation, licensing of certain entrepreneurial activities, price policy, product and services certification, prevention or restriction of monopolistic position of certain entrepreneurs in the market, and prevention of unfair competition [1].

Governmental regulation includes support of entrepreneurship not only by financing, but also by improving business climate and reducing administrative barriers, which impede business development.

In the modern law science, the concept of a permit system is approached in different ways. According to D.N. Bakhrakh, the permit system is the legally regulated total of social relations between administrative bodies on the one hand and citizens and organizations on the other, which relations arise in connection with the issuance of permissions for conducting certain activities and further supervision over the compliance with the rules and conditions of conducting such permitted activity [2]. D.V. Osintsev also defined it as a specific type of governmental and managerial relationship, which involves authorization, or formal recognition of the access of businesses to spheres of activity, which require professional compliance with various qualification and administrative requirements oriented to prevention of negative consequences [3]. A.B. Bagandov determines the permit system as a type of administrative activity, which includes granting permissions to specially protected objects

of the permit system, supervision over compliance with rules of the permit system, taking administrative actions and drawing up documents for bringing violators of the permit system to responsibility [4].

Permit system is the legally regulated total of social relations between administrative bodies on the one hand and citizens and organizations on the other, which arise in connection with the issuance of permissions for conducting certain activities and further supervision over the compliance with the rules and conditions of conducting such permitted activity [5].

#### Methodology.

The formally logical method of research traditional for legal science was used as the basic method in this article. In the research, other special methods were used, as well, including functional analysis of legal phenomena, systemic and structural approach, and historical analysis.

#### Body of the work.

In the circumstances of market establishment in the Republic of Kazakhstan, a new permit system was formed, which presently generates certain problems in the form of chaotic nature of the existing permit system. During the transitional period of legislation formation, public bodies introduced a huge number of various permission obtaining procedures. Many permissions do not perform their initial functions and are morally outdated (their life cycle is over).

Analysis of permissible documents shows that often both their various names are used as interchangeable concepts (i.e. having functionally identical meaning, e.g.: act of examination and certificate of examination), and various functional meanings of the same term are used (e.g.: qualification certificate and certificate of registration). Due to this reason, current legislation is not able to provide complete functional definitions of these terms. The variety of terms leads to the variety of permissions, and results in their arithmetic increase for particular businesses.

One of the problems of the permit system is the complexity of the permit law. According to Article 10 Clause 2 Sub-Clause 1 of the Civil Code of the Republic of Kazakhstan, the rights of entrepreneurs who conduct legally permitted activity are protected with the possibility to conduct entrepreneurial activity without obtaining any permissions, except for licensed activities [14]. The Code also stipulates that the licensing of particular activities be set forth with the purpose of ensuring national security, law and order, and protection of environment, property, life and health of citizens.

Despite the above-mentioned clauses of the

Code, the legislation stipulates plenty of various permissions, which are not licenses.

In fact, the permit legislation does not consist of only the Law of the Republic of Kazakhstan On Licensing, but also of a large number of other regulatory acts, which specify other types of permissions.

In his Presidential Address to the people of Kazakhstan dated January 27, 2012, the President of the Republic of Kazakhstan N.A. Nazarbaev emphasized the importance of rendering high quality public services and associated it with the reform of the permit legislation [15].

The reform of the permit system is complicated by the fact that there are multiple regulatory acts, which stipulate the order of permissible procedures. Existence of these problems is predetermined by absence of unified approaches to permissible documents and procedures in Kazakhstan.

For the past decade, the government has done a large work on improvement of the permit system. By now, several consequent reforms have been accomplished.

In order to reduce administrative barriers, on December 27, 2002, the Decree of the Government “On Announcement of Moratorium on Auditing Small Businesses During the Period between January 1 and October 1, 2003” was enacted, which directed central and local executive bodies to cease auditing small businesses [6].

In 2004, decentralization of the licensing procedure took place with respect to a large number of licenses, which were transferred the level of local executive bodies.

On January 31, 2006, the Law of the Republic of Kazakhstan “On Private Entrepreneurship” was adopted, stating main legal, economic and social conditions and warranties, which would ensure the freedom of entrepreneurial activity [7]. The law targeted the regulation of the legislative determination of the interaction order between private entrepreneurs and public bodies, which perform controlling and supervising functions.

The law stated a limiting list of audit types applicable to private entrepreneurs, the order of their organization, intervals between them, and their duration.

In 2007, the new Law of the Republic of Kazakhstan “On Licensing” was adopted, which accounted best world practices, and main principles of this law even nowadays stay up-to-date (silence means consent, the principle of one window, and others).

In 2008, the development of the governmental

E-Licensing database started, which was to ensure complete automation of licensing procedures.

According to the order of the President on normalization and optimization of audits, the Government enacted Decree #178 dated February 21, 2008, which announced the moratorium on audits of small and medium businesses [8].

In 2009, the moratorium on audits of small and medium businesses was extended until July 1 by Decree of the Government #176 dated February 17, 2009 [9].

On July 17, 2009, the Law "On Introducing Changes and Supplements into Certain Legal Acts of the Republic of Kazakhstan Concerning Private Entrepreneurship." Amendments were made in 72 legal acts, including eight codes [10].

For the first time, a unified law stated the general order of auditing for almost all public bodies (excluding the National Bank, the Agency for Protection of Competition, the Audit Committee and power-wielding bodies). The law updated the principles and tasks of governmental supervision over private entrepreneurs, defined the goals, subject and forms of audits, stated the unified order of audits, and systematized the types of audits and grounds for initiating audits.

The business was granted additional opportunities to protect their rights during audits, including:

- registration of the auditing process;
- engagement of third parties in audits;
- non-admission to audit of any public body officials in case of material violation of the order of initiation and conduct of the audit;
- facilitation of the liquidation procedures with respect to small businesses, which belong to the medium and low risk groups;
- the right to demand for admitting the results of an audit invalid in case of material violations of the order of its conduct and organization;
- participation in the COR through accredited associations under Expert Councils.

In 2009, the Concept of further reforming of the permit system in 2009-2011 (hereinafter referred to as the Concept 2009-2011) was developed and approved, which prescribed to carry out complete inventory of the permit system following the "guillotine" principle. In order to implement the "guillotine" method, an appropriate methodology was developed in Kazakhstan and a group of experts was created for optimization of decisions. It is to be noted that the Concept 2009-2011 did not state any precise definition of a decision. In other words, the precise frames for further work had not been determined initially.

Since 2010, the planning and conduct of audits has been carried out on the basis of the risk assessment system, which assumes that every public body must determine where violations cause more serious consequences and where they do not, and then break up entrepreneurs into the following risk groups: high risk, medium risk and insignificant risk groups. Depending on the risk group, the public bodies are to audit the most risky businesses, which will improve the efficiency and reduce the pressure on business. Entrepreneurs of the high-risk group must be audited every year, of the medium-risk group - once in three years, and of the insignificant-risk group - once in five years.

In order to implement the Concept 2009-2011, on July 15, 2011, the Law was enacted, according to which 348 permissible documents (procedures) were cancelled, and the procedures of issuing permissions were facilitated by cutting time expenditures and expenses of businesses. For the first time, the unified order of notification on the commencement of entrepreneurial activity was enacted instead of multiple cancelled permissible procedures of informational nature. Along with cutting permissions, facilitation of permissible procedures was provisioned by means of:

- 1) popularization of the "one window" principle with respect to approving licenses with all public bodies;
- 2) popularization of the "silence means consent" principle with respect to all permissions;
- 3) statement of a unified term of license issuance – 15 business days;
- 4) verification of submitted package of documents for integrity – within two days;
- 5) cancellation of mandatory notarization of documents [11].

On July 10, 2012, the President signed the Law, which stated reduction of the number of licenses and permissions by 30% more, issuing licenses in an electronic form, and the notification procedure basis for particular permissions, as well as cutting the list of control and supervisory functions of public bodies and optimizing audits of businesses. The above law cancelled 257 types of permissions, which had not influenced the level of security with respect to top threats, out of 1096 revealed permissions, and stated the notification procedure for 40 permissions, which were not associated with direct danger to life and health of people and were of informational nature [12].

Currently, in order to normalize the whole permit system, the new Concept of further reforms of the permit system in 2012-2015 (hereinafter referred to

as the Concept) has been approved [13].

The main principle of the Concept is the implementation of an Integrated Permit System, which would prescribe classification of permissible documents and their categorization by hazard levels.

Within the framework of the Concept and adoption of the draft Code of Entrepreneurship of the Republic of Kazakhstan, the following problems of the permit system are going to be solved:

- absence of balance between interests of the government, the business and consumers;
- non-application of risk management systems in the permissible practice of Kazakhstan;
- continuous and uncontrolled increase of the number of permissible documents and absence of reliable statistics in the permit system;
- absence of efficient implementation of the reforms, which are currently carried out.

#### Conclusion.

In order to solve the above-mentioned problems in the permit system, it is necessary to work out the solution methodology and to approach the problem solution in a comprehensive manner.

When the draft Code of Entrepreneurship is adopted, the problem of complexity of the permit law will be generally solved. For example, Article 34 of the draft Code of Entrepreneurship states a limiting list of permissible documents for conducting certain entrepreneurial activities.

Chapter 7, Liability in the Sphere of Entrepreneurial Activity, of the draft Code of Entrepreneurship is stated very precisely and intelligently. The current legislation still provides public bodies with sweeping powers along with insufficient level of their responsibility. Public bodies are not at all responsible for the permissible procedures, which they enact, and which do not achieve the objectives of their enactment.

Moreover, public bodies are not even responsible in case when after they have issued a permissible document, confirming the safety of the conducted activity, negative consequences still ensue, despite the fact that the occurrence of such consequences must have been prevented by this permission. This situation significantly affects the efficiency of the government regulation, and, sometimes, enacted measures have the reverse effect. And the whole burden of responsibility and, accordingly, the expenses is shifted to the entrepreneur who, in his turn, shifts the expenses to consumers. Consequently, the unbalanced permit system leads to soaring corruption at the background of diminishing the consumers' rights. However, upon enactment of the Code of Entrepreneurship, the situation is to change for better.

#### Summary.

We find it necessary, first of all, to normalize the permit system by using unified principles and approaches and, if necessary, to introduce new principles in the permissible legislation and in the draft Code of Entrepreneurship in order to improve the efficiency of the government regulation of entrepreneurial activity. Second thing to be done is to exclude the corruptive element of the permit system. Thirdly, it is necessary to implement the risk management system in the law enforcement practice in Kazakhstan and to limit the uncontrolled increase of the number of various permissions.

Implementation of the above-mentioned suggestions will result in optimal functioning of public bodies, strengthening of social control in this sphere, encouragement of voluntary law-obedience of entrepreneurs, and create good environment for stable conduct of business and conduce further energization of entrepreneurs.

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*Бұл мақалада Қазақстан Республикасының кәсіпкерлік қызметтің мемлекеттік реттелуі сараланған. Қазақстанда кәсіпкерлік қызметтің рұқсат етілген жүйесіндегі мәселелері анықталған. Рұқсат етілген жүйенің реформациясының хронологиялық тізбектілігі қарастырылған. Рұқсат етілген жүйедегі мәселелердің шешімі ұсынылған.*

**Түйін сөздер:** Кәсіпкерлік қызмет, Қазақстан Республикасындағы кәсіпкерлік, Қазақстан Республикасының заңнамасы, рұқсат етілген жүйе, мемлекеттік реттеу.

*В данной статье проанализировано государственное регулирование предпринимательской деятельности Республики Казахстан. Выявлены проблемы разрешительной системы предпринимательской деятельности Казахстана. Рассмотрена хронологическая последовательность реформирования разрешительной системы. Предложено решение проблем в разрешительной системе.*

**Ключевые слова:** предпринимательская деятельность, предпринимательство Республики Казахстан, законодательство Республики Казахстан, разрешительная система, государственное регулирование.

*In this article, the government control of entrepreneurial activity in the Republic of Kazakhstan is analyzed; problems of the permit system in the Republic of Kazakhstan related to the entrepreneurial activity are revealed; the chronological consequence of the permit system reforms is considered; and ways to solve the problems on the permit system are suggested.*

**Keywords:** entrepreneurial activity, entrepreneurship in the Republic of Kazakhstan, legislation of the Republic of Kazakhstan, permit system, government control.

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**Problems of the Permit System in the Republic of Kazakhstan Related to Entrepreneurial Activity**

