

## REGULATORY POLICY OF KAZAKHSTAN: PROBLEMS AND PERSPECTIVES

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### Abstract

The article is devoted to the problems of implementation of “smart regulation” in Kazakhstan. In this article the review of Kazakhstan's regulatory policy formation under the past 10 years has been conducted. The authors consider the perspectives and trends in the development of Kazakhstan's regulatory policy. Also in this article the role of state regulation of entrepreneurial activity in matters of improving the investment and business climate in Kazakhstan is shown.

**Key words:** regulatory policy, smart regulation, business climate, investment, entrepreneurial activity

**JEL Classification:** R38; R48

The development and implementation of the regulatory policy is conditioned by the need to improve the welfare of the population through more effective social and economic policies of the state, economic development by increasing productive efficiency, especially for small and medium-sized enterprises, ensuring the rule of law, the security of the state and society, life and health of the population.

Regulation is a key tool for achieving the goals of social, economic and environmental policies of governments. Governments have at their disposal a wide range of regulatory mechanisms that reflect the complexity and diversity of the needs of their citizens, communities and economies.

An analysis of international experience shows that the need to implement the regulatory policy was dictated by emerging financial crises, environmental disasters, a decline in the standard of living of citizens, regional conflicts, zones of instability, total control of state property, transition periods to a rapidly developing market economy.

In the past three decades, the OECD has declared itself as the main developer of international principles in regulatory policy based on best practices. Such principles presuppose the creation of better institutional mechanisms for the management of regulators and, accordingly, complement several documents such as *the OECD Guide*

*for Regulatory Performance Analysis (RIA) (2008), containing methodological recommendations for improving the regulatory framework, the OECD Principles on Enforcement Practice and audit by regulators based on best practices (2014) and the OECD Recommendations to the Council on Regulatory Policy and Public Policy (2012). All these documents support the working processes in the OECD countries, allowing regulators to improve technologies and methods of work and supporting the efforts of regulators to attract and promote high-quality specialists [www. fstrf.ru/.../Printcipy\_OESR\_v\_sfere\_regulyatornoj\_politiki\_redaktciya\_ITOG.d...].*

Over the past 20 years, governments of OECD countries have been very effective in implementing various instruments in the regulatory policy that have allowed them to significantly improve the business climate and in a short period of time bring the share of small and medium businesses in GDP to an average of 60 to 70 %.

Successfully implemented in EU countries regulatory policy based on the principle of "smart regulation" is to continuously and systematically improve the quality of regulation through integrated impact assessment at each decision-making stage, its implementation and monitoring, clear coordination of interested government bodies and consideration of the views of all targeted impact groups.

The regulatory system of Kazakhstan was built in new market conditions and was superfluous and inefficient, was unnecessarily onerous for business and did not provide security for consumers. The main reasons for the randomness of rulemaking and enforcement of the existing regulatory system were:

- Absence of the system of "smart" rule-making - analysis of the regulatory impact of regulatory legal acts (ARI);
- Duplication of regulation carried out by different state bodies;
- Duplication of state regulatory functions and self-regulation of professional communities (where it exists);
- Duplication of state regulatory functions and conformity assessment procedures in the system of technical regulation;
- Duplication between different levels within one state agency, as well as between central and local executive bodies;
- Duplication between state permits and government audits;
- The same volume of qualification requirements for entities creating a different level of risk;
- The use of regulatory instruments that are not adequate to the level of risk, including administrative penalties, which is not proportional to the severity of offenses.

The problems regulation by state bodies were resolved as they arose, by introducing new regulatory instruments.

In 2009-2012, an analysis was made of the state of regulation of entrepreneurial activity, which revealed the following problems:

- Firstly, business and consumers did not have access to regulatory acts that established mandatory requirements to the process of their development, there was no monitoring of their implementation;

- Secondly, there were no data on the exact number of licensing procedures in force, issued permits and registries of licensees;

- Thirdly, there was no statistics security in the regulated spheres and actual information about the supervised subjects, which in turn expanded the sphere of application of control;

- Fourthly, state authorities did not disclose information about their regulatory tools, as they were not responsible for the business climate in their industries, consumer safety and blocked initiatives of business, consumers and the authorized body of reforms for further improvement of the regulatory system. In addition, state bodies sought to introduce new permitting procedures and other aggravating amendments to laws through the deputies of the Parliament, bypassing the current system of public appraisal of drafts of the legal acts.

Thus, regulatory (permissive and control-supervisory) procedures have become the most corrupt tools. With such a volume of administrative transactions, the regulatory system was not observable and not manageable.

It should be noted that in the system of state regulation, operated at that time, the dominant position was occupied by the state, which established rules of the game, usually aimed at ensuring the interests of the state. In such a system, business did not have residual levers of influence and was under the weight of the administrative burden. As a consequence, the business shifted its costs, arising from such regulation, to the consumer. Thus, the consumer remained the most vulnerable part of such a system.

The subject of regulatory policy are regulatory instruments and legislative requirements, in other words, the norms of regulatory legal acts which are prescribing mandatory behavior, setting rules, parameters and standards.

The main tools of regulation in the field of entrepreneurship are:

- Permissions;
- Control and supervision;
- information tools.

One of the fundamental directions of the policy of enterprise development is the deregulation of entrepreneurial activity by facilitating the permissive and notification system.

In Kazakhstan, the role of regulation in the field of entrepreneurship has already clearly manifested itself at the initial stage of reforming the permissive and notification system. In particular, in order to limit the arbitrary introduction of new regulated types of entrepreneurial activities, to restrict regulatory areas and create conditions for their transfer to a competitive environment, in 2007 the Law of the Republic of Kazakhstan "On Licensing" was adopted in a new version (*now lost its force due to the Law of the Republic of Kazakhstan "On Permits and Notifications" which was adopted in 2014*). This provided some progress in optimizing the licensing system. According to foreign experts, the law reduced the issuance of licenses to 240,000 entrepreneurs, which allowed the Kazakhstani business to save about 10 billion tenge, without reducing the state budget revenues from the shortfall in license fees in 2008 [<http://adilet.zan.kz/rus/docs/P080001100>]. In addition, since 2000, the certification procedures have been transferred to a competitive environment, which allowed the opening of more than 200 conformity assessment bodies, 500 testing laboratories and 400 metrological services [In the same place].

In Kazakhstan, the implementation of the regulatory policy allowed to "squeeze" the permissive system twice - in 2012 and in 2016.

According to experts' calculations, the "squeezing" of the permissive system in 2012 by reducing 331 procedures allowed cutting business costs by at least 28 billion tenge, and for an unlimited number of business entities. In 2016, the optimization of the permissive system was carried out by simplifying the entire system as a whole and by reducing the permissive documents by 50%. At the same time, the overall reduction in the costs of entrepreneurs in 2016, as a result of a reduction in the number of permits issued on a fee basis, amounted to KZT 3.7 billion.

The main trends in the development of the licensing system are:

- *Reduction, optimization and categorization of permits, the establishment of a single list of permits and notifications by law;*
- *Full automation of the procedure for issuing permits, including licenses and notifications.*

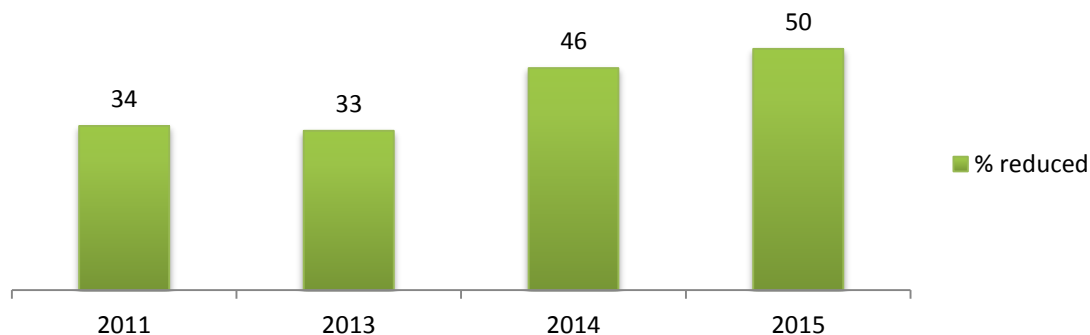


Figure 1. The tendency of "squeezing" of the permissive system in the Republic of Kazakhstan for 2011-2015

Thus, as a result of the "squeezing" of the licensing system, the number of valid permits (procedures) from 2011 to 2015 decreased more than 3 times.

In order to limit the arbitrary implementation of regulatory instruments, which were a significant barrier to business at the entrance to the market, the state, over the past 10 years, conducted a number of reforms in the country (about 18 legal acts) in the field of business regulation and licensing, which allowed creating a solid legal foundation of Regulation of entrepreneurial activities which aimed a gradual reduction of administrative barriers and improvement of the business climate in the country.

However, nowadays, the improvement of the licensing system continues to be one of the key priorities of the state and in general is aimed to reduce administrative barriers, which can contribute to creating favorable conditions for development and business.

Currently, the system of state control and supervision in the country is built only on ascertaining the facts of violations during inspections and applying sanctions to entrepreneurs. In addition, the indicator of the activities of the control and supervisory bodies is not the decrease in the number of adverse incidents, but the number of inspections and penalties. At the same time, monitoring of the effectiveness of state control and supervision by regulators is not implemented.

The activities of the regulatory and supervisory bodies are divided into three stages:

- The imposition of duties, the establishment of prohibitions, restrictions;
- Control over the implementation of mandatory requirements (before release on the market or directly on the market);
- Imposition of sanctions for non-compliance with legal requirements.

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The regulatory mechanisms are the development and adoption of regulatory and legal acts, including Laws, licensing control, inspections, administrative measures under the Code of Administrative Offenses (fines, penalties, etc.).

The ongoing reforms in the control and supervisory sphere affect almost all aspects of the work of regulators in this area by the following directions:

- 1) institutional reorganization of state control bodies;
- 2) Legislative review;
- 3) Creation of information systems and databases for the identification of sectors and enterprises with an increased level of risk;
- 4) Implantation of new forms and methods in the appointing procedures and conducting inspections;
- 5) Activation of work with the business community for establishing feedback and monitoring the work of inspections;
- 6) The organization of a mechanism for appealing against the control process and measures to combat corruption;
- 7) Coordination of control activities and exclusion of duplicative powers of various monitoring bodies.

Over the past 3 to 5 years, the reform of state control and supervision has been carried out through the transition from planned inspections to the organization of inspections based on risk assessment, as well as introducing, as an alternative to the inspections of the possibility of liability insurance, audit and expertise of business entities.

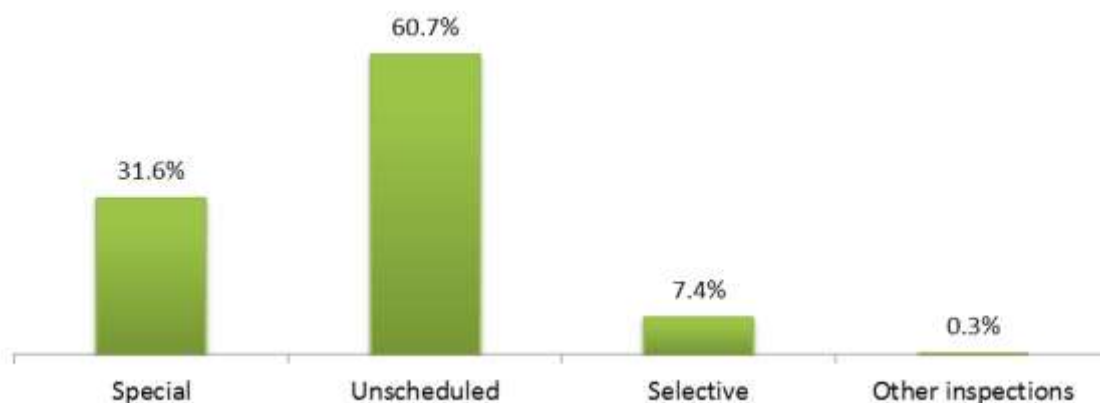
In Kazakhstan, a moratorium on business audits was imposed three times in 2008, 2009 and 2014, the purpose of which was not only to support SMEs, but also to systematize the mechanism and procedure for conducting inspections. At the same time, the establishment of moratoriums on inspections of business entities made it possible to distinguish the main problem: the system of checks itself provoked supervisory bodies to selectively approach to their own work. Businessmen did not have an incentive to be conscientious, since the state control system was formally bureaucratic, was mostly punitive, rather than preventive.

Now this problem is eliminated by introducing a new risk assessment system as a basis for assigning inspections. If earlier they were appointed often simply because the deadline for checking had approached without considering the actual level of threat to life and health of the population, the environment or the property interests of the state, now these issues are mainly taken into account. Moreover, the more honest the entrepreneur will follow the requirements of the legislation, the less often he is controlled by the supervisory bodies.

Thanks to new approaches to state control and supervision, the focus of the control function shifts from conducting inspections and subsequent analysis of only the results of inspections to the analysis of additional sources (criteria).

These include the timely submission of reports, their completeness, the consistency of data, the achievement of the indicators, the availability of automated accounting and reporting systems and their compliance, consumer complaints, information from other government agencies, etc.

The result of the reform of the control and supervisory sphere for 2013 - 2016 was a reduction in the number of inspections of business entities by 45%.



**Figure 2. Types of inspections of business entities, 2016**

During their activities, many entrepreneurs face a lot of problems associated with the provision of various types of reporting (documents, notifications and certificates, tax, financial and other reporting, other documents, declaration of the composition of products, publication of data on bankruptcy, changes in ownership of enterprises, etc.). Any reporting is, first of all, an administrative barrier, involving the allocation of significant financial resources to pay for the cost of labor of employees who follow instructions for completing reporting forms and study the legal framework, the cost of external organizations and external consultancy services.

The use of information tools in the world practice of state regulation is one of the gentle options for government intervention in business activities. At the same time, in many developed countries of the world information tools, which are called information obligations, are often subject to reform in the framework of regulatory reforms.

The costs of information obligations are also the main type, which are so-called as administrative costs of business.

Reducing business costs associated with reporting should be carried out while ensuring an optimal balance between the needs of government agencies for information and business opportunities to provide it.

In Kazakhstan, the reform of information tools began in 2016. The stages of the reform involve the revision of information tools, the formation of an exhaustive list and the legislative consolidation of all information tools. As a result, the number of information tools is expected to decrease by 30%, which will significantly reduce the costs of Kazakh entrepreneurs.

One of the important steps in the implementation of regulatory policy based on the principle of "smart regulation" is the introduction of a regulatory impact analysis (RIA). RIA is designed to contain a huge wave of new regulatory documents, laws and by-laws that comes from regulators, increasing the burden on entrepreneurs and making fines more severe.

World experience shows that there are no preset parameters for analyzing the regulatory impact, it all depends on the priorities of the state and the decision-making agency. In some countries, regulators place emphasis on assessing the impact on the business, in others - on the quality of the environment. In some countries, the methodical core is the evaluation of benefits-costs, in others - a qualitative assessment of the expected impact. However, in any case, the main role of ARV is the adoption of a balanced, deliberate decision at the state level and separation of inefficient decisions at the stage of adoption of a legislative act.

In 2015, Kazakhstan introduced and operates the RIA Institute, whose main mission is to prevent the adoption of economically inexpedient and ineffective regulatory acts, to reduce government interference in the activities of business entities and to remove obstacles to the development of entrepreneurship.



**Figure 3. Introduction of the RIA Institute in Kazakhstan**

Summarizing the positive experience of RIA in different countries, the procedure of RIA in Kazakhstan is divided into seven key stages.



**Figure 4. Stages of the RIA procedure in Kazakhstan**

One of the main objectives of the RIA procedure is to determine the minimum cost of the introduced regulation. Each regulation is, to some extent, associated with costs, both for business and for the authorities themselves. When calculating the benefits and costs, various methods are used. These methods allow you to compare scenarios and options. When calculating costs and benefits, you can combine these methods. Each method has its pros and cons. The choice of method depends on the purpose of the analysis of the regulatory impact and justification of the actions. Often acts are passed through RIAs, in the basis of which there are no calculations, the developers of which did not project the consequences of their proposed standards. As a result, a negative conclusion is made, RIA projects are sent for revision and, for objective reasons, making a decision is delayed. It is necessary to develop an algorithm and to teach in advance to count and plan all the costs that the draft act entails. This is not only an ideology, but also specific methods of work that are important and need to be implemented (Table 1).

**Table 1. Methods for calculating benefits and costs**

<b>Name of the method</b>	<b>Advantages</b>	<b>Disadvantages</b>
Analysis of economic efficiency (CEA= Cost/Effect)	Does not require an accurate measurement /assessment of benefits To compare you can use alternatives that involve more or less the same result	Does not solve the problem of choosing the optimal level of benefits; Concentrated on one kind of benefits (no side effects); Does not give an estimate of net profit; Does not imply a refutation of the poor formulation of the problem
Cost-benefit analysis (CBA = Benefits - costs)	Includes all (positive/negative) effects Allows you to compare the order of costs/benefits Gives information about pure social benefits	It is impossible to include an impact that is not expressed in quantitative/monetary form; Requires additional analysis (for example, the distribution effect)
Threshold analysis	Political/social legitimacy	Concentrated only on one risk; Underestimates the alternative costs/costs of substitution.
Analysis by multiple criteria	Recognizes the presence of multiple parameters Allows you to use different types of data It emphasizes trade-offs, as well as the distribution effect	Involves elements of subjectivity (choice of criteria and weighting factors); There is no explicit definition of benefit/cost ratio; There is no direct inclusion of the time range

In addition to the above mentioned methods, methods for calculating costs and benefits also include other methods such as:

- Analysis of the lowest cost (LCA);
- Analysis of compliance costs (CCA);
- Risk reduction analysis (RRA).

Responsibility for the preparation of RIAs in accordance with the Entrepreneurship Code of the Republic of Kazakhstan is vested in the regulatory authorities, since they have the necessary information in the sphere or industry regulated by it, on which the quality of the RIA procedure depends.

Nowadays, not all regulatory state bodies consider the ARV procedure as support in the formation of a coherent and qualitative policy in the relevant industry/sphere. Rather, as an unnecessary and additional formality complicating the decision-making process. As a result, the procedure for using RIA regulators is accompanied by a number of problems. At the end of 2016 it was revealed that on average, every third draft of RIA presented by regulators does not include calculation of costs for alternative regulatory options.

In addition, every fifth RIA project was submitted without a protocol for public discussions. Whereas, the conduction of public discussions allows us to identify the positions of the interested parties, makes the process of reviewing the draft document transparent, ensures that the positions of the parties are taken into account.

On average, every seventh RIA submitted by state bodies either does not contain alternatives, or alternatives do not correspond to the proposed regulation or duplicate each other. It should be noted that the quality of RIAs depends on the identification of alternatives which are reasonably facilitating the conduct of entrepreneurial activities. Making a balanced decision at the state level is impossible without identifying and evaluating alternative approaches to the proposed regulation.

An analysis of the state of regulation of entrepreneurial activity has shown that RIA procedures are currently being carried out formally, but real discussion, search for options and calculation of costs are not made. The goals, declared in the introduction of RIAs, cannot generally be achieved because of the undeveloped indicators of evaluation. Meanwhile, all the specified procedures in the aggregate extend the period for drafting laws and other drafts of legislative acts for several months.

More than 60% of RIA projects are marked by a low level of quality analysis, more than 20% of RIA projects contained inappropriate proposals for regulation. And only about 10% of RIA projects were aimed to solve existing problems.

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Thus, during the period of the RIA institute in Kazakhstan, significant progress has been made, but there are still some problems in terms of implementing an effective regulatory management system.

In Kazakhstan, the introduction of the principle of "smart" regulation has made it possible to build a comprehensive system for making economic decisions based on the interests of the whole society, to remove many administrative barriers and to create conditions for making simple and understandable decisions. Some work has been done to implement OECD recommendations in the field of regulatory policy.

With the positive and progressive nature of the reforms being carried out in Kazakhstan in accordance with OECD recommendations, one of the state's strategic goals is to ensure that by 2050 the contribution of small and medium-sized businesses in the country's GDP is at least 50%. In this regard, the issues of improving the business environment are under the control of the President of State, who in his message to the people of Kazakhstan dated January 31, 2017, "The Third Modernization of Kazakhstan: Global Competitiveness" determined the cardinal improvement and expansion of the business environment as the second priority of modernization.

Thus, the role of regulation is not only to reduce the administrative burden for business, also to create mechanisms and institutions that ensure transparency and validity of legislative acts and, overall, to improve the business climate, to reduce government spending by reducing administrative costs, creating favorable Investment and business climate, increasing the number of business entities, increasing employment and the contribution of SMEs to the economy of the country.

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