





## Анализ нормативно-правовых основ создания трастового фонда в Республике Казахстан

Ляззат Ибрагимова

### The purposes of the creation of biodiversity conservation trust funds are following:

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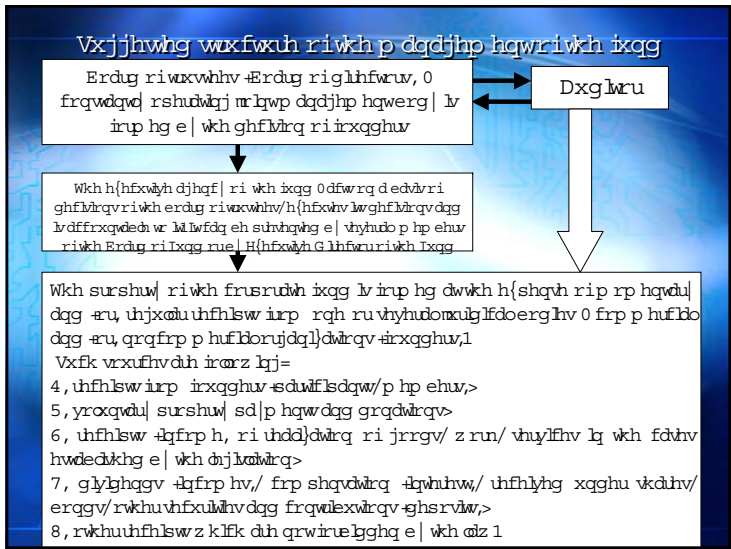
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| Advantages   | Disadvantages   |
|--|---|
| Both commercial and noncommercial organizations (a broad variety of involved subjects, including the state) can be the founders of the fund. | Lack of the opportunity for individuals (scientists, public figures, etc.) to become members of the fund. |
| Possibility exists to attract international organizations (including donors) to participate in the creation of the fund as a full founder.   |   |
| Significant capitalization of the fund (at the expense of founders)  |   |

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| Advantages   | Disadvantages  |
|--|--|
| Loyalty of the international organizations to the Fund as to an independent institute so that it is capable to strengthen the non-governmental sector and increase the potential of NGO which take part in the activities of biodiversity conservation | Only individuals and public associations which are also created by individuals can be founders of the fund (other international organizations, government institutions, can not participate as founders of the fund) |
|  | Insignificant amount of the capital  |
|  | Absence of direct governmental involvement into the activities of the fund and therefore such fund is not attractive for international donors  |

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| Advantages  | Disadvantages  |
|---|--|
| Total control by the government which gives an opportunity to influence on a policy of the Fund in favor of governmental priorities | Only government can be a founder of the fund and it does not correspond to the interests of international donor organizations that are interested in supporting non-governmental institutions. |
|   | Impossibility to involve non-governmental organizations in the activities of the state fund.   |

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| Kind of a tax       | Description of the regime   |
|---------------------|---|
| Corporate sur-tax   | According to clause 120 of Tax Code of the Republic of Kazakhstan the income of a noncommercial organization received in the form of compensation under deposits, grants, entrance and membership payments, charitable and donor's help, gratuitously transferred property, deductions and donations on a gratuitous basis is not a subject to the taxation provided that the following conditions are observed: 1) The noncommercial organization has no purpose of obtaining the income as it is; 2) The noncommercial organization does not distribute received net profit or property between the participants. Other incomes are a subject to the taxation in accordance of the generally established order. |
| The value-added tax | According to clause 229 of Tax Code of the Republic of Kazakhstan turnovers on realization of the services which are carried out by noncommercial organizations specified in item 1 of clause 120 of TC are exempted from the value-added tax if they are connected:<br>1) with rendering services on protection and social security of children, aged, veterans of war and work, invalids;<br>2) with realization of ceremonies, rites and trading of religious accessories by religious organizations   |
| Ground tax          | According to clause 338 of TC juridical bodies defined in clause 120 of TC calculate the ground tax using the lowering factor 0,1.  |

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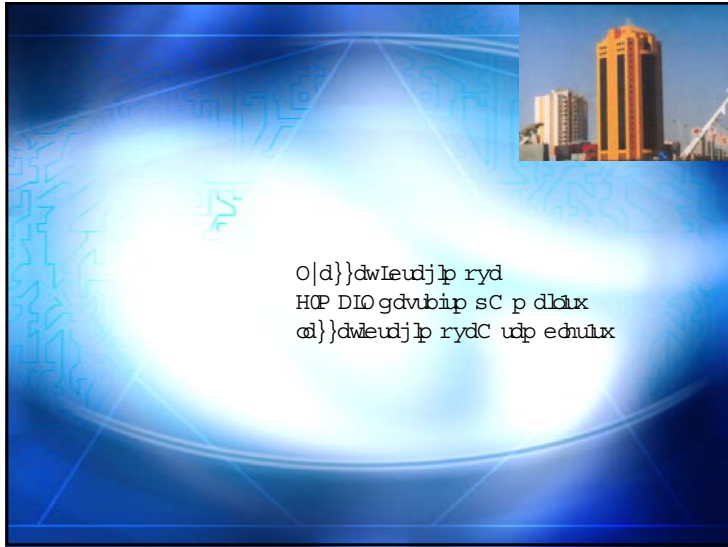
| Kind of a tax    | Description of the regime   |
|------------------|---|
|                  | According to Tax Code grant is the property given on a gratuitous basis to states, state governments ; international and state organizations, foreign non-governmental public organizations and funds, whose activity has charitable and international character and does not contradict to the Constitution of the Republic of Kazakhstan, included in the list issued by the Government of the Republic of Kazakhstan on the conclusion of the state bodies |
| Value-added tax  | According to clause 234 of TC import of the goods which is carried out on the basis of grants given by states, state governments and international organizations is exempted from value-added tax   |
| Social tax       | Payments which are made due to grants given by states, state governments and international organizations (clause 316 TC) are not the object of the social tax. These conditions are applied, if payments are made according to the contract concluded either with the grantor or with the executor appointed by the grantee for realization of the purposes of the grant  |
| Ground tax       | According to clause 338 of TC juridical bodies defined in clause 120 of TC calculate the ground tax using the lowering factor 0,1   |
| Customs payments | According to clause 330 of Customs code of the Republic of Kazakhstan goods bought at the expense of grants given by states, state governments and international organizations defined according to the tax laws of the Republic of Kazakhstan are exempted from custom payments  |

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| Pro  | Contra   |
|--|--|
| Such law would give the Fund a special status without binding to any existing juridical act;           | There are no any legal preconditions for creation of such law, i.e. the legal structure of regulating conditions is very vulnerable (for example a special law was created for establishing investment fund of Kazakhstan due to the fact that the purposes of creation of the Fund had been proved in the Strategy of industrially-innovative development of Kazakhstan.) |
| Possibility of creation of a general act which can regulate all aspects of the activities of the Fund. | Creation of this special law will entail the necessity of including corresponding norms into the Laws «Environmental protection» and «Especially protected areas »   |
| Fulfillment of the international obligations connected with biodiversity protection and conservation.  | Possibility of the acceptance of corresponding amendments in existing laws   |

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Creation of the Fund should be regulated at the state level as the government participates in its activities; it is supposed that international organizations- donors will be involved as cofounders of the fund. After signing the Constituent contract of the Fund (Memorandum, Agreement) with international organization (PROON/GEF) the government will incur certain obligations which will cause the necessity of carrying out some interstate procedures on legitimization of the conditions of the contract; Prospective investment activities of the Fund should be settled by the legislation as it is stipulated for banks, pension funds, insurance companies of the RK. There are certain restrictions and specifications on investment activity of these institutions; Creation of the Fund will form the basis for accepting respective alterations into the tax laws (fixing of certain privileges), and into the legislation of the state purchases, etc.



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