**DRAFT PROPOSALS ON CONCEPT OF THE DRAFT SUBSOIL CODE**

**I. GEOLOGICAL INFORMATION:**

- Geological information is a property; geological information created by the subsoil user belongs to the user based on property rights (ownership, use and disposal of geological information are regulated by general principles of the property rights provided by the Civil Code of Ukraine);

- Geological information is divided into primary and generalized;

- The subsoil user submits data (by application) on primary geological information to the State Geological Information Fund;

- Generalized information is subject to transfer (with further disposal possibility) to the State Geological Information Fund for storage;

- The subsoil user creates and transmits standard samples of rocks and minerals to the State Geological Information Fund;

- State Geological Information Fund creates and maintains the public electronic register of available geological information indicating its owner.

**II. THE RIGHT TO SUBSOIL USE:**

Documents that Establish the Right to Subsoil Use:
- Agreement on the subsoil use (optional: special permits and agreement on the subsoil use);
- Production sharing agreements (PSA);
- Previously issued special permits continue to operate; subject to request of a subsoil user it can be replaced by contracts on subsoil use on unpaid basis.

Types and Terms of Subsoil Use:

- Geological exploration - 10 years;
- Geological exploration with subsequent production - 25 years; 40 years on shelf;
- Production - 20 years; 30 years shelf;
- subsoil use not related to production/mining (underground storage facilities, the use of groundwater for personal, industrial, agricultural needs, medical resources) - 20, 50 years.

Subsoil Users:

- Foreign legal entities or individuals may be considered as subsoil users (with the obligation to be registered as a taxpayer / to open a representative office or establish a subsidiary company within 3 months after the receipt of subsoil use rights)

- The subsoil user in the subsoil usage agreement may be represented by two or more persons, each of whom receives a certain share of subsoil use rights; in this case the operator is elected among such persons; the operator has the authority to represent all persons on behalf of the subsoil user to the state and third parties; relations between persons acting on behalf of the subsoil user are regulated by the operating agreement;

- Subsoil users can conclude investment contracts, joint activity agreements; the subsoil user (a person with whom the subsoil use contract is signed) should be a joint activity operator under joint activity agreements with state companies;

- State companies hold public auctions for partners under joint activity agreements.

Acquisition of Subsoil Use Right:
- based on results of the auction;

- out of auction, subject to conditions strictly prescribed by legislation;
- absence of preferences for state companies to obtain subsoil use out of auction;
- based on production sharing agreement to be concluded under the Law of Ukraine "On Production Sharing Agreements";
- based on civil law transactions.

Auction:
- All stages of auction are open, transparent and public;
- The central executive authority organizes an auction;
- Auctions for subsoil area can be initiated by stakeholders;
- The organizer of the auction establishes qualification requirements for participants and minimum obligations regarding works on the subsoil area (minimum amount of works and/or liability) not later than 90 days before an auction;
- The auction is held if at least one candidate is present;
- The auction winner is the person who offered the highest price.

Cases of provision of subsoil use right out of auction:

- in case of production if the applicant has performed geological study and calculation of reserves – subject to application of the person who carried out geological exploration and calculation of reserves; other approvals are not required; the term of issuance - 20 working days from the moment of filing of the application.

- subsoil use not related to production/mining (underground storage facilities, the use of groundwater for personal, industrial, agricultural needs, medical resources).

Civil-law contracts:

- The right to use (its part) may be alienated to other persons.

- The subsoil user who has shown willingness to perform alienation is obliged to provide to authorized government authority the information about the acquirer of the rights; the state authority can refuse to issues the agreement on alienation if the acquirer is not capable to continue the accomplishment of terms of the contract on subsoil use.

Grounds for termination of subsoil use:

- Expiration of validity;
- Waiver of subsoil user's right;
- Liquidation of the legal person or death of the physical person who are subsoil users;
- Upon court’s decision (based on the fact of submission of false data; invalidation of results of the auction, violation of essential terms of the contract on subsoil use by the subsoil user).

**III. INFRASTRUCTURE FACILITIES:**

- Wells, other mining and infrastructure facilities are owned by the person who carried out construction; such person is responsible for maintaining security at such facilities, including period after termination of subsoil use right;

- The subsoil user who is not the owner of wells, mining and infrastructure facilities has the right to unrestricted access to such facilities and the first-priority lease or purchase right;

- State Geological Information Fund creates and supports the electronic public register of existing wells, mining and other infrastructure facilities;

- Oil and gas wells, as well as objects of pipeline transport facilities, access roads, power lines and other production facilities connected with oil and gas wells operation beyond localities should not be considered as objects of urban planning.

**IV. OTHER PROVISIONS:**

- Subsoil use activities are not subject to licensing;

- No requirement for registration of the mining lease;

- Obligation on disclosure of information according to requirements of the Extractive Industry Transparency Initiative;

- The basic legal document regulating the subsoil use should be the Subsoil Code (thus, cancellation of existing CMU Resolutions related to subsoil use, the Law "On Oil and Gas", Mining Law, current Subsoil Code);

- The introduction of deposits into industrial development or exploration is performed by the subsoil user under relevant project, subject to state examination; central government authorities are informed by application;

- Simplified procedure of land allocation for subsoil use.