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

1. **MAIN PRINCIPLES:**
2. The Subsoil Code should be the main legal act in the subsoil regulation system.

- the Law “On Oil & Gas”, current Subsoil Code, Mining Law, CMU Resolutions (#594, #615 dated 30 May 2011; #423 dated 13 June 1995; #865 dated 22 December 1994 etc.) should be cancelled and replaced by the Subsoil Code upon its becoming effective.

1. The Subsoil Code should provide for clear accountability.

* There should be the “one stop shop” principle - the only state authority is in charge of subsoil use regulation (“Subsoil Use Regulator”), including issuing of licences for subsoil use;
* the structure of such state authority should be clear and transparent;
* the Subsoil Code should set clear and precise procedures for the decision-making process (clear timelines for decision making, exhaustive grounds for rejection/restriction in subsoil use rights etc.);
* state officials should bear individual responsibility for violation of such procedures;
* risk-oriented principle should apply to the conduct of audits by state authorities of subsoil users’ activities.

1. The Subsoil Code should set efficient measures of investments security.

* the Subsoil Code should contain a stabilization clause: no amendments to subsoil legislation should be introduced during 3-5 years following the adoption of the Code unless for the benefit of the subsoil user;
* a “proper governance” principle should be established in the Code providing that the state should bear responsibility for risks arising from any mistake or negligence by the state authority. The Subsoil Code should contain an exclusive list of payments for subsoil use (for example, the initial cost estimation of the license, geological information provided by the state).
* all payments should be calculated in a clear, transparent and unified manner;
* payments of a tax nature should be also specified in the Tax Code of Ukraine.

1. **THE RIGHT TO SUBSOIL USE:**
2. Documents that establish the right to subsoil use:

* **Licenses.** The unified “license on subsoil use” should be introduced to replace various Upstream related licenses (for “exploration”, “exploration with pilot commercial development”, “production”) whilst the previously issues licenses should survive until the end of their validity term. Subsoil use terms should not be divided into different stages and it should be up to the license holder themselves to determine progression on further subsoil activities (exploration, production etc.). Terms on different license stages should be removed. The general term of the license validity should be 25 years least. A special transition period should be envisaged for those subsoil users who have licenses for geological exploration with pilot commercial development at the time the Code is adopted. License term extension rights should be generally provided and guaranteed for subsoil users, except for certain list of exclusions prescribed by the Subsoil Code.
* **PSA.** Criteria for nominating areas for PSA should depend on capital intensity of the project, deep water drilling and offshore projects.

1. Subsoil Users:

* Foreign legal entities or individuals may be subsoil users (with the obligation to be registered as a taxpayer / to open a representative office after the receipt of subsoil use rights).

1. Acquisition of Subsoil Use Right:

* based on results of the auction;
* the granting of licenses without an auction should only take place in an exhaustive list of circumstances strictly prescribed by the Subsoil Code;
* based on PSA to be concluded under the Law of Ukraine "On Production Sharing Agreements";
* based on civil law transactions (alienation/lease of subsoil use rights to a third party).

1. Auctions:

* all stages of auction are open, transparent and public;  
  - the Ministry of Ecology and Natural Resources organizes and holds an auction;  
  - auctions for subsoil area can be initiated by an application of an interested party;  
  - the organizer of the auction should establish 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;
* electronic/digital auctions should be introduced;   
  - the auction to be considered valid even if only one party bids;  
  - the auction winner to be the person/entity who offers the highest price.

1. Granting of licenses without an auction:

* only to take place under exhaustive list of grounds and principles to be clearly prescribed by the Subsoil Code. Such grounds should ensure mechanisms when licenses may be obtained strictly under the law;
* subject to the above, grounds for granting of licenses without an auction should exclude any preferences for any candidate (applicant) regarding state and private companies.

1. Grounds for termination of subsoil use:

* expiration of its validity term;
* upon application of subsoil user;
* winding up of the legal person w/o a transfer of the right to subsoil use to a third person;
* upon the decision of the trial and Appeal courts which entered into force, in the exhaustive list of cases prescribed by the Subsoil Code (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).

1. License transferability:

* if grounds for termination are strictly determined by law as per 6 above, the right to subsoil use may be transferred to other persons;
* the subsoil user who wants to get the license transferred is obliged to notify authorized state body information about the acquirer of the rights;
* the state authority can only reject transfer of the license in court, based on the exhaustive list of grounds stipulated by the Subsoil Code.

1. **INFRASTRUCTURE FACILITIES:**

* the person having property rights of wells or other facilities is responsible for their abandonment and security after termination of subsoil usage rights; the subsoil user may have the first-priority right to purchase such wells or facilities from the owner via a civil law contract. The subsoil user who is not the owner of wells, mining and infrastructure facilities has the right to unrestricted access to such facilities.
* Upon liquidation/conservation of the well and other facilities, the owner is responsible for elimination of fluid kicks and other similar issues. In case such person ceases to exist this responsibility shall vest with Subsoil Use Regulator.
* State Geological Information Fund should create, support and maintain the electronic public register of existing wells;
* wells, metering and separation facilities, as well as objects of pipeline transport facilities (including facilities for wells infrastructure construction), access roads, power lines and other production facilities connected to wells should not be considered as objects of urban planning and shall be released from application of the respective legislation requirements.

1. **GEOLOGICAL INFORMATION:**

* geological information is to be treated as property under Civil law; geological information created and registered as such in the State Register of Geological Information by the subsoil user should be treated as belonging 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 should be divided into primary and generalized; clear and exhaustive criteria should be defined for primary and generalized information;
* the subsoil user submits data (by application) on primary geological information to the State Geological Information Fund. Primary geological information is submitted to the Fund only upon the decision of the subsoil user or due to winding up of the legal person and without of legal successor;
* generalized information should be submitted for its storage to the Fund (with a possibility of disposal);
* the subsoil user to be responsible for providing standard samples of extracted rocks and minerals to the State Geological Information Fund;
* state Geological Information Fund to be responsible for the creation of the public electronic register of available geological information indicating its owner.

1. **OTHER PROVISIONS:**

* subsoil use activities should not be subject to licensing as a type of business activity;
* no requirement for registration of the mining lease;
* there should be an obligation on disclosure of information according to requirements of the Extractive Industry Transparency Initiative;
* commercial development or pilot commercial production should commence under a relevant project document executed by the subsoil user; the duty of the subsoil user should be to notify central government authorities on commercial development or pilot commercial production but should not be required to seek permission;
* there should be a mechanism for production of associated natural resources or by-products resulting from the process of mining under a special permit subject that such substances are not commercially viable in their own right (an exhaustive list of such substances shall be provided by Subsoil Code); no payments for production of such substances should be established; no necessity for introduction amendments to special permit should be prescribed;
* introduction of a land reservation clause in the subsoil use, meaning state authorities or other bodies should not make any decisions to change the land categorization which may impede or interfere with the rights of subsoil users during the term of validity of license. Information regarding granting of a license on a certain land area should be submitted to State Service of Ukraine for Geodesy, Cartography & Cadaster.

1. **DISCUSSION IS NEEDED:**
2. Engagement of local authorities in license granting procedure: locals should approve license granting, land allocation, reports on environment impact assessment.
3. Control mechanism by the state subsoil authority of fulfillment by subsoil users obligations/terms of licenses:

* approval of work programs.