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

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

- the Law “On Oil & Gas”, current Subsoil Code, Mining Law, CMU Resolutions should be cancelled.

1. The Subsoil Code should provide for clear accountability.
* the Ministry of Ecology and Natural Resources should be the only state authority in charge of subsoil use regulation, including granting of licences.
* the structure of such state authority should be clear and transparent.
* the Subsoil Code should set clear and precise procedures of decision making process (terms of delivery the decision, exclusive grounds for rejection etc.)
* state officials should bear individual responsibility for violation of such procedures.
* risk-oriented principle should apply to conduction of control/inspections 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 as well as from the date of granting of licenses unless it’s for the benefit of a subsoil user[[1]](#footnote-1).
1. The Subsoil Code should contain an exclusive list of payments for subsoil use (initial cost estimation of the license, geological information disposed 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 granted. No distinctions should be made as for subsoil use stages. The license holder decides himself 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.
* **PSA.** Criteria for nominating areas for PSA should depend on capital intensity of the project, deep water drilling and offshore projects.[[2]](#footnote-2)
1. 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[[3]](#footnote-3)).
1. Acquisition of Subsoil Use Right:
* based on results of the auction;
* absence of preferences for state companies to obtain subsoil use out of auction;
* out of auction, subject to conditions strictly prescribed by legislation;
* based on PSA to be concluded under the Law of Ukraine "On Production Sharing Agreements";
* based on civil law transactions.
1. Auctions:
* all stages of auction are open, transparent and public;
- the Ministry of Ecology and natural resources 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;
* electronic/digital auctions should be introduced;
- the auction is held if at least one candidate is present;
- the auction winner is the person who offered the highest price.
1. Out of auction license granting:
* Extension up to 50% of a subsoil land plot previously granted for use aimed at geological exploration and increase of production due to subsoil land plot extension up to 50% of reserves defined by a previously granted license provided however that the subsoil land plot previously granted for use has the single structure with the neighboring plot, unless the neighboring plot has been granted for use (modified version of p.2 of Art.8 of CMU Resolution #615)
* Geological exploration and production of natural resources of local significance (p.3 of Art.8 of CMU Resolution #615);
* Geological exploration including commercial development, production of underground waters (except mineral waters) for all purposes except package drinking water (p.6 of Art.8 of CMU Resolution #615);
* Geological exploration and production of recreation resources (p.7 of Art.8 of CMU Resolution #615);
* Construction of underground facilities (not related to natural resources production) built for underground storages, waste water/hazardous substances, drainage (p.9of Art.8 of CMU Resolution #615);
* relief wells (p.11 of Art.8 of CMU Resolution #615);
* creation of geological territories and facilities important for science, culture, recreation etc. in case of its geological exploration and preservation (p.10 of Art.8 of CMU Resolution #615);
* PSA (p.15 of Art.8 of CMU Resolution #615,). PSA is subject to PSA Law;
* Chornobyl area activities (p.17 of Art.8 of CMU Resolution #615);

**Grounds to be excluded from “out of auction license granting” list:**

* production of natural resources in case the applicant explored himself the subsoil plot and estimated reserves (p.1 of Art.8 of CMU Resolution #615);

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| * + Geological exploration of subsoil resources at the cost of state budget (p.4 of Art.8 of CMU Resolution #615);
	+ Geological exploration and production of amber (p.16 of Art.8 of CMU Resolution #615);
	+ if the applicant is the owner of the integral property complex for geological exploration and industrial development of deposits of national significance resources not related to oil&gas (p.18 of Art.8 of CMU Resolution #615);
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1. Civil-law contracts:
* the right to subsoil use may be transferred to other persons[[4]](#footnote-4).
* the subsoil user who wants to get the license transferred is obliged to provide to authorized state body information about the acquirer of the rights; the state authority can reject transferability of the license if the acquirer is not capable to continue the accomplishment of terms of the contract on subsoil use.
1. Grounds for termination of subsoil use:
* expiration of validity;
* waiver of subsoil user's right;
* liquidation of the legal person;
* upon the decision of the trial and Appeal courts which entered into force (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. **INFRASTRUCTURE FACILITIES:**
* wells, other mining and infrastructure facilities are owned by the person who was the customer of such construction (and holder of the license) back at the time. 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;
* wells, as well as objects of pipeline transport facilities, access roads, power lines and other production facilities connected to wells should not be considered as objects of urban planning.
1. **GEOLOGICAL INFORMATION[[5]](#footnote-5):**
* geological information is a property under the Civil law; 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. Primary geological information is submitted to the Fund only upon the decision of the subsoil user or due to its liquidation and absence of legal successor;
* generalized information should be submitted for its storage to the Fund (with a possibility of disposal);
* 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.
1. **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;
* 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;
* introduction of land reservation clause for subsoil use.
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:
* compliance with work programs;
* cancellation of work programs. Setting the particular term for exploration stage with an obligation to switch to production;
* cancellation of work programs. Imposition of certain payment for exploration stage. Such a payment will increase each year of exploration to stimulate the investor to switch to production and thus rent rates.
1. Associated licenses: to cancel licenses on production of associated resources (water, sand etc.) along with main resources in case such production is costly and wasteful.
1. Further discussion is needed. [↑](#footnote-ref-1)
2. Further discussion is needed. [↑](#footnote-ref-2)
3. Further discussion is needed: how / who will be holding the title to license then? subsidiary (unlike Representative office) is a separate legal entity from the parent company and so if we want the subsidiary to be able to be recorded as a license holder – the Subsoil code should provide for such mechanism [↑](#footnote-ref-3)
4. Further discussion is needed: do we want the licences to be freely transferrable (should the Code allow to sell them directly to somebody else?), or only to a subsidiary – like we can do now. [↑](#footnote-ref-4)
5. Further discussion is needed: to specify criteria what particular info is primary/secondary; what the functions of the State Geology Service will be if it is no longer a licensing body; what kind of geo reports and information users will need to submit to SGS. [↑](#footnote-ref-5)