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New subsoil investor opportunities through auctions

Introduction

If an investor wants to engage in oil and gas exploration or production in Kazakhstan, the first step is to obtain a subsoil use right (**SUR**) through a contract (**SUC**). An investor may obtain a SUR either directly (acquiring it from a current subsoil user or from the state) or indirectly (by buying shares in a subsoil user or its direct or indirect parent company (“objects linked to SUR” – **Objects**). Another option is to work in cooperation with a national company that has the right to obtain a SUR from the state through direct negotiations. Otherwise the SUR can be obtained from the state only at auction (**Auction**). The last option is to obtain a SUR or Objects through a public sale by a pledgeholder or bankruptcy manager during an enforcement process.

Kazakhstan’s *Subsoil and Subsoil Use Code* dated 27 December 2017 (**Code**), which came into force on 29 June 2018, did not substantially change any of the above options except for acquisition of a SUR at auction.

The article below outlines how an investor may obtain a SUR from the state at auction.

Auction Procedures

Territory

An Auction may be held only for subsoil sites included on the map of territories available for hydrocarbons subsoil use in Enclosure 3 of the *State Subsoil Fund Management Program* (**Program**). The latest version of the map may be viewed at <https://gis.geology.gov.kz/geo>.

If the site of interest is not in the Program, then the *Ministry of Industry and Infrastructure Development* (**MIID**) may be asked to include it in the Program. The formal request should contain the coordinates of corner points, type of operation (*i.e.*, exploration or production), type of mineral (*e.g.*, hydrocarbons), as well as the site’s administrative location. MIID will request the opinion of the Ministry of Energy (**MoE**) and, after consideration, either adopt an amendment to the Program (including the new land plots) or refuse to do so, explaining the grounds for refusal.

Requirements to Participate in an Auction

An investor wishing to acquire a SUR (**Applicant**) must meet the following criteria (**Criteria**):

- ▶ The investor must not be undergoing liquidation, corporate restructuring, or bankruptcy;
- ▶ The investor must not be in arrears on taxes or other obligatory payments to the state;
- ▶ The investor must possess financial assets adequate to fulfill minimal requirements for the volume and type of work required on the site during the exploration period.

If an Applicant applies for an offshore SUR, then in addition to the above Criteria, the Applicant must possess professional experience in conducting subsoil use operations on Kazakhstan’s continental shelf or inland waters, or in the sea outside the territory of Kazakhstan (**Offshore Experience**). Relevant professional experience by the Applicant’s shareholder can also be considered Offshore Experience if the shareholder owns at least 25% of shares in the Applicant.

Under Article 154.6 of the Code, if a SUR is granted for a land plot at sea, KazMunaiGas must hold at least 50% of the SUR.

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