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New opportunities for investors: obtaining subsoil use right for hydrocarbons through auction



I. Introduction

If an investor wishes to commence oil and gas activity (exploration/production) in the Republic of Kazakhstan (**“RoK”**), it shall obtain a relevant subsoil use right (**“SUR”**), which is formalized by execution of a relevant subsoil use contract (**“SUC”**).

An investor may obtain SUR either directly (SUR acquisition from an acting subsoil user or from the state) or indirectly (by buying shares in a subsoil user or its direct or indirect parent company (so-called “objects linked to SUR” (**“Objects”**)). Besides, a SUR may be obtained in cooperation with the national company, which has the right to obtain SUR from the state through direct negotiations (all other persons may obtain SUR from the state only at a relevant auction (**“Auction”**)). At last, a SUR or Objects may be obtained through a public sale initiated by a pledgeholder or bankruptcy manager during enforcement process.

The RoK Code on Subsoil and Subsoil Use dated 27 December 2017 (**“Code”**) which came into force on 29 June 2018 in general did not introduce substantial changes to any of the above options, except for the option when a SUR is acquired through an Auction.

This article outlines how an interested person may obtain SUR from the state through an Auction.

II. Auction procedure

2.1. Territory

An Auction may be held only with regard to subsoil plots included into the relevant map of territories available for hydrocarbons subsoil use operations set out in Enclosure 3 to the State Subsoil Fund Management Program (**“Program”**). The latest version of the map may be viewed at <https://gis.geology.gov.kz/geo> (please see the map valid as of 25 June 2019 in Annex hereto).

If the territory of interest is not included into the Program, any person may address the RoK Ministry of Industry and Infrastructural Development (“MIID”) with the request to include a subsoil plot into the Program. The application shall contain information on coordinates of corner points, type of operation (i.e. exploration or production), type of mineral (e.g. hydrocarbons), as well as the location of the subsoil plot. The MIID requests the opinion of the Ministry of Energy (“MoE”) and after the consideration either adopts amendments to the Program (with inclusion of new land plots) or refuses to do so with references to grounds for refusal.

2.2. Which person may apply for an Auction?

A person, interested in acquisition of a SUR (“**Applicant**”), shall meet the following criteria (“**Criteria**”):

- (a) not being at the stage of liquidation, corporate restructuring or bankruptcy;
- (b) absence of outstanding debt on tax payment and other obligatory payments to the budget;
- (c) availability of financial assets, sufficient for execution of minimal requirements to volumes and types of work on the subsoil site during the exploration period.

If an Applicant applies for an offshore SUR, in addition to the above Criteria, it shall have a positive professional practice in conducting subsoil use operations at the RoK continental shelf or inland waters, or at sea outside the RoK territory (“**Offshore Practice**”). The Offshore Practice is also deemed complied with if the Applicant’s shareholder has the relevant professional practice and owns not less than 25% of shares in the Applicant.

Please note that under Article 154.6 of the Code, if SUR is granted for a land plot at sea, “National Company “KazMunaiGas” JSC shall have not less than 50% of shares in such SUR.

[Read more:](#)

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