

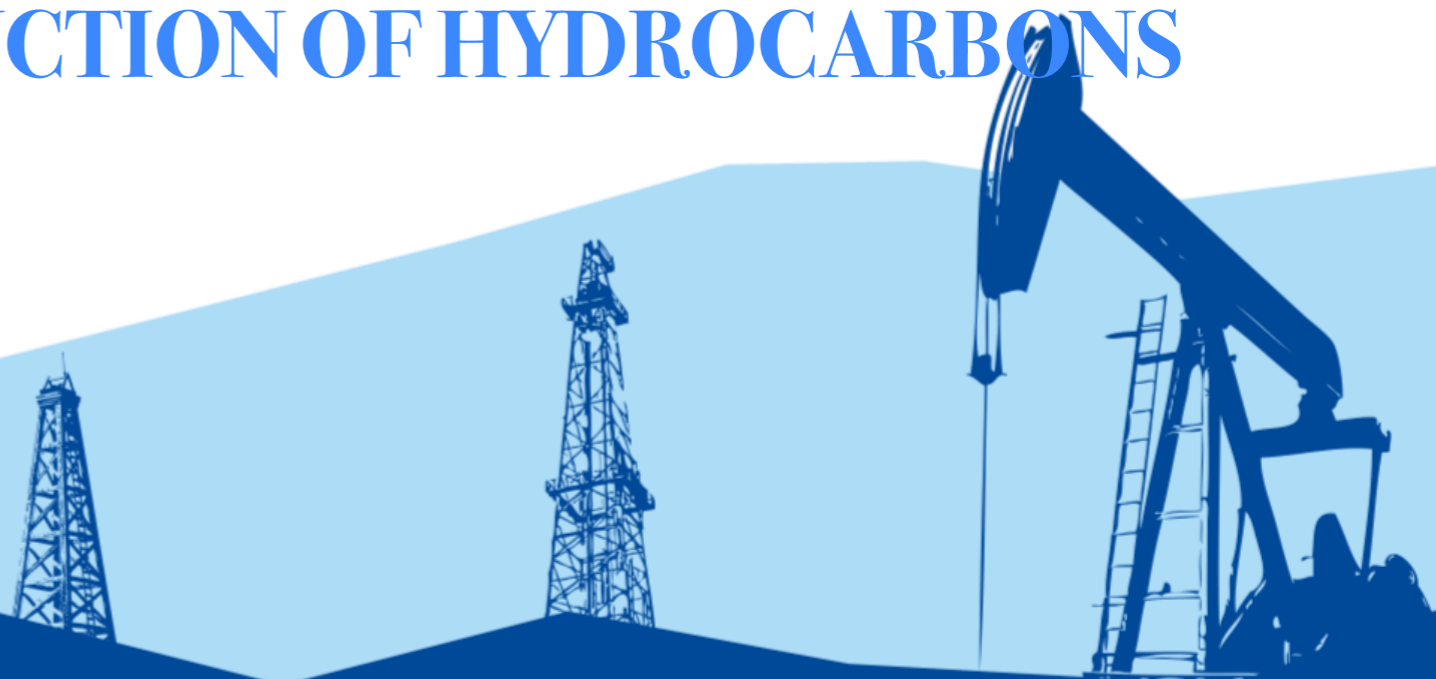


THE CODE ON

SUBSOIL AND SUBSOIL USE

SPECIAL PART. SECTION 7.

EXPLORATION & PRODUCTION OF HYDROCARBONS

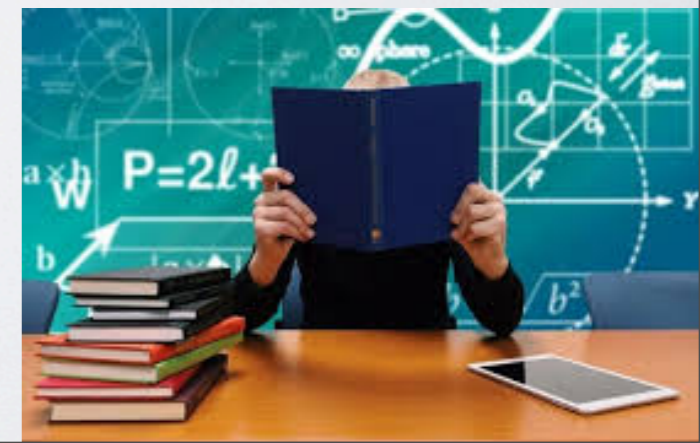


QUALIFICATION REQUIREMENTS TO APPLICANTS

Requirements:

- Legal entities shall not be in the process of liquidation, reorganization or bankruptcy
- Shall not have any unpaid taxes or other mandatory payments to the KZ budget
- Successful practice in offshore subsoil use operations either in the Republic or Kazakhstan or abroad and minimum 25% of equity holdings by such legal entity (when field is offshore)
- Must have sufficient financial means for minimal requirements on volume and type of exploration works on the subsoil plot

Financial means are confirmed by presenting balance sheet and by documents confirming cash (either extract from the bank account or attracted capital such as loan agreement or similar document,)



INITIATING AN AUCTION

**MAKE A
REQUEST!**

- Oil fields may be obtained by private companies only through auctions (unless they partner with KMG)
- Person interested in obtaining subsoil use right applies to the Ministry of Energy for arranging an auction on specific field
- Application for auction must be reviewed within 20 business days
- Within 20 business days the ministry shall publish a notice on holding an auction or refuses to hold an auction

ANNOUNCEMENT OF AUCTION

Auction notice shall be published 2 months prior to the auction on the website of the Ministry of Energy and in the republican periodicals. Such notice shall include:

1. date and time of the auction
2. deadline brief description of the plot
3. types of subsoil you operations
4. amount of participation contribution
5. minimal requirements of subsoil use operations and estimated costs
6. starting amount of the signature bonus
7. expenses on education of Kazakhstan employees during production.
8. Amount of expenses for scientific research, technical and experimental construction works during production
9. amount of expenses for social and economic development of the region and infrastructure during production
10. minimal requirements for local content in the works services and personnel
11. data on registered right of land provided for subsoil use
12. Time for exploration and preparation periods under subsoil use contract



AUCTION

REFUSING AN AUCTION



Ministry of energy may refuse to hold an auction in the following cases:

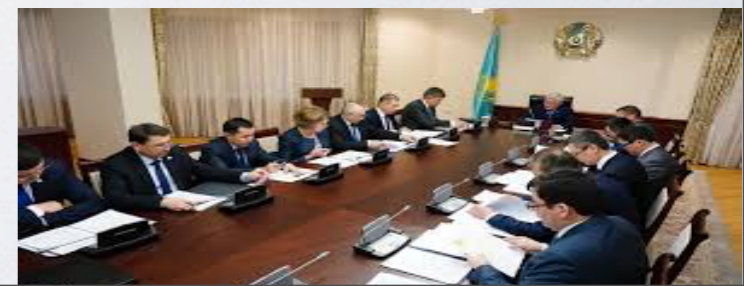
1. If the requested subsoil use plot is not listed in the National Mineral Wealth Program or such territory does not coincide with the listed boundaries;
2. If the applicant filed an application for auction within the last three years but you did not register as a participant of the requested auction
3. The applicant recently had a contract that was terminated early by the Ministry
4. The applicant has not eliminated defects on other subsoil use contracts
5. The applicant did not be signature bonus during previous subsoil right auction
6. The applicant provided false data
7. Granting such subsoil use right to such person will endanger national security of Kazakhstan including concentration of rights within the contract

AUCTIONS COMMISSION

- Auctions Commission is a regular collegial body at the Ministry of Energy consisting of members appointed by the Minister.
- The Commission (i) holds the auction on granting subsoil use rights on exploration or production of **hydrocarbons** and (ii) determines winner from the participants
- The commission shall have a chairman which can be replaced by his or her deputy when absent
- Quorum is at least 2/3 from the total number of members

Rights of the Commission:

- (i) Determine the winner;
- (ii) cancel the auction or recognize it in valid;
- (iii) listen to members of the Commission, representatives of state bodies, institutions and other persons;
- (iv) when necessary use experts from specialists in corresponding areas



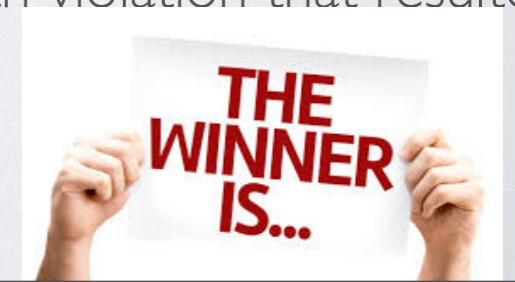
THE AUCTION OPTIONS

- Ministry of Energy must notify the participants that have been accepted to participate in the auction at least 10 business days before the auction itself.
- If no one or less than 2 entities will apply to participate in the auction then the Commission within three business days shall make a decision to cancel the action.
- If cancelled the subsoil use contract shall be concluded with the person that requested an auction provided that such person shall pay the starting (minimal) signature bonus.



THE WINNER TAKES IT ALL

- Participant that offered the **biggest amount of the signature bonus** shall become the winner of the auction.
- The results of the auction shall be announced and immediately & recorded in the minutes. Copy of the minutes shall be given to the winner and results must be published on the website of the Ministry of Energy and in the republican periodicals in Kazakh and Russian.
- The winner shall develop Program of Works complying with minimum requirements on activity.
- If the winner offered *more than 50% of local content* when applying for the auction then such obligations shall be included into the contract on subsoil use of hydrocarbons.
- Within 20 business days as of the receipt of signed contract and payment of signature bonus the Ministry of Energy shall enter into the subsoil use contract and shall send signed counterpart to the winner.
- If the winner does not pay the signature bonus in time and/or does not provide to the Ministry of Energy signed subsoil use contract then it loses the right to contract and the subsoil plot shall be auctioned again
- The other participants may invalidate the auction through court if it was held with violation that resulted in wrongful choice of the winner.



OPTING FOR DIRECT NEGOTIATIONS

- KMG may participate in auctions or may receive subsoil use right via **direct negotiations** in certain cases
- KMG may initiate direct negotiations on any oil & gas field listed in the national mineral wealth program provided that no one has applied for an auction on this plot.
- KMG may invite Strategic Partner for financing the development of such oil & gas field provided that Strategic Partner meets the financial investment requirements of KMG.
try to find this list of requirements. See Clause 103.6
- Strategic partner must either pay the signature bonus or compensate the payment that KMG has already made.
- Subsoil use right granted via direct negotiations cannot be transferred within two years as of the registration of subsoil use contract.



DIRECT NEGOTIATIONS PROCEDURE

- Ministry of Energy creates special Working Group to participate.
- Direct negotiations must not last longer than two months although Ministry of Energy has the right to prolong the period.
- After the negotiations the Ministry of Energy shall decide whether to enter into the contract or refuse the deal.
- If the Ministry decides to grant the contract then national company or its strategic partner must pay the signature bonus in the amount defined in the negotiations within 20 business days.
- Within the same 20 business days national company must submit exploration and production contract which must be drafted on the basis of the model contract as approved by the Ministry of Energy.

how significantly this draft can deviate from the model contract?



TERMINATION OF OIL & GAS CONTRACTS

Ministry of Energy may **unilaterally** terminate the contract early in the following cases:

1. Judicial decision prohibiting subsoil use activity;
2. Oil and gas company failed to obtain positive expertise of the Project Documents
3. Subsoil use right or objects related thereto were transferred without permit from the State which caused *national security hazard*.
4. Oil and gas company invested less than 30% from its annual financial obligation
5. Oil and gas company violated more than two of the contract obligations

RENEGOTIATING OIL & GAS CONTRACT

- When actions of the oil and gas company that owns Strategic Field worsen Kazakhstan's economic interests in a way which creates *national security hazard* then Ministry of Energy may demand change or amendment of the subsoil use contract.
- The purpose of such requirement must be *remedying the economic interests of the Republic of Kazakhstan*.



How would you define or measure such a hazard or the remedy?

LEVERAGE TO MODIFY

- Oil company has no more than two months to confirm it's consent to negotiate modifications in the contract or reject renegotiation
- Oil company must reach an agreement on modifying the contract within four months from the date of the consent
- Well company has six months from the end of negotiations to sign the new modification to the oil contract

Failure to meet any of the above deadlines gives the right to the ministry of energy to terminate subsoil use contract unilaterally.



CONSEQUENCES OF TERMINATION

- Oil and gas field shall be considered returned to Kazakhstan as of the termination date.
- After the end of exploration period the contract is terminated unless oil company concluded amendment with regards to production or preparation period in this oil field
- After the termination the Ministry may choose inter alia to (a) hold new auction on this oil field or (b) transfer the field into the trust management to KMG.



ACQUIRING PLEDGED OIL FIELD



- When the subsoil use right or objects related to the subsoil use right are charged by pledgeholder then sale of such right/objects by the pledgor must be done *through public auction*.
- Participation in such auction requires permit from the Ministry of Energy.
- If the auction does not result into sale then the pledgeholder may either (a) turn the pledge into its property or (b) require new auction. In both cases consent of the Ministry of Energy is a must.
- Any arrangements and agreements that contradict the above are legally invalid.



DISPUTES AND LIABILITY

SECTION 5.

- Discrepancies related to implementation modification or termination of the subsoil use right must be regulated by the laws of Kazakhstan and international agreements ratified by Kazakhstan.
- Statute of limitation for Ministry's claims against subsoil user with regards to its violations of the contract or license is 3 years from the date when the Ministry exposed or should have exposed the breaches.
- Persons that caused damages to the mineral resources and subsoil of Kazakhstan by breaching legal requirements must compensate such damages and losses in the amounts envisaged by the Subsoil Use Code and other legislation
- Violating the contract or license results into liability envisaged by the Special Part of the Code.

Please name such an agreement for European, US and Chinese oil companies?

