

THE CODE ON

SUBSOIL AND SUBSOIL USE

SECTION 2. STRUCTURE OF SUBSOIL USE RIGHT



SUBSOIL RIGHT AND ITS SUBSTANCE

«Subsoil use right» shall mean the capacity to use the subsoil as secured by the Code:

1. at a charge (on payment basis);
2. within the allocated land plot;
3. for business purposes; and
4. within certain time frame.



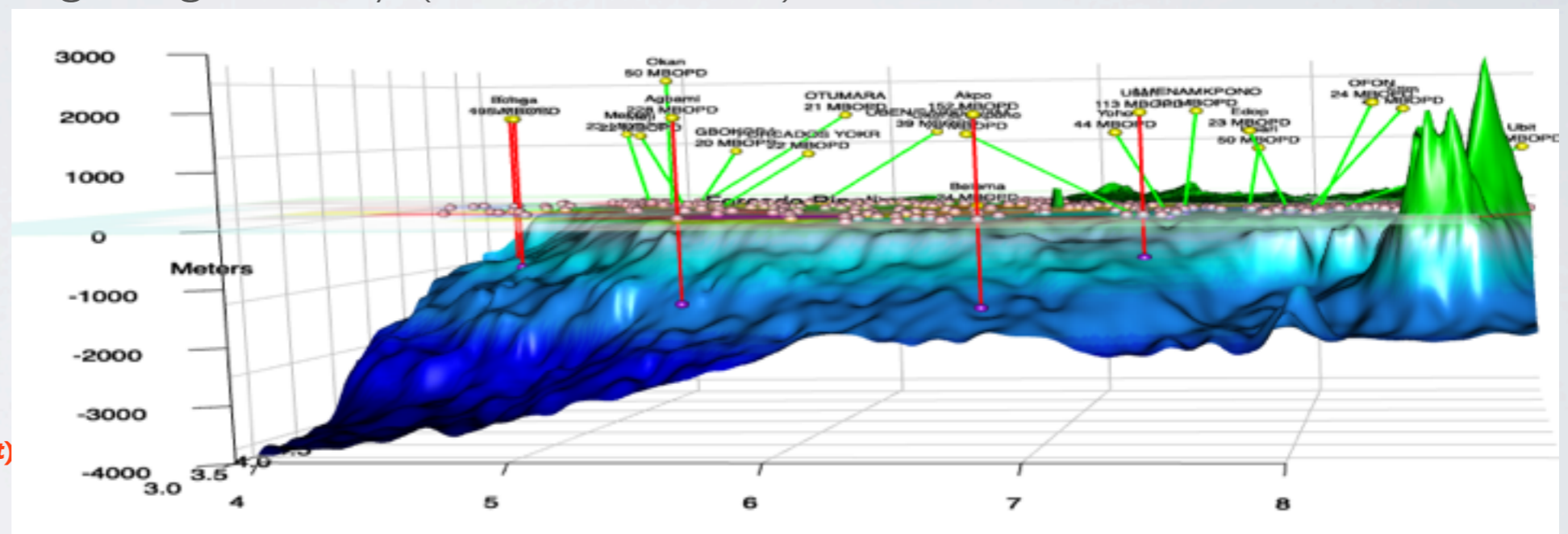
Subsoil use right shall use the provisions on the ownership right.

THE SUBJECTS OF THE RIGHT

- Individuals and legal entities may obtain the Right
- The Right may be obtained by few/several persons. In such event the possession of the right shall be common (analogue - common property like in marriages or condominiums).
- Possessors of the Right must enter into agreement defining ratios and relations between them.

SUBSOIL PLOT

- Subsoil plot means geometrised part of the subsoil with spatial boundaries. Such boundaries shall have (i) geographical coordinates and (ii) depth having upper and lower limits.
- Upper boundaries shall lie *lower than the ground or sea bed*. Lower boundary shall be placed on depth available for geological study (Science matters!)



BLOCKS (New concept)

Kazakhstan is divided into approx. 130,000 **blocks**. Each block shall have a side equal to *one geographical minute*.

25 blocks = **Subsection** of blocks. 100 blocks = **Section** of blocks.

Each Section, Subsection and Block have identification coordinates and individual codes.

LEGAL BASIS OF THE RIGHT

- i. License
- ii. Contract (termination of license/contract leads to termination of subsoil use right)

The Right is obtained in the event of:

- granting of the Right by the State (competent authority)
- transfer of the Right due to civil transactions
- transfer of Right after reorganisation (except for transformation or inheritance)

TYPES OF OPERATIONS

1. geological study
2. exploration of mineral resources
3. extraction/production of mineral resources
4. using the subsoil space
5. digging (старательство)

PROJECT DOCUMENTS

Presence of all Project Documents is a must ! Government controls compliance and expertise of subsoil users using these specific details.

Projects documents documents reflect:

1. Plans
2. Procedures
3. Methods
4. Technical terms
5. Technological parameters
6. Volume
7. Time frame
8. Other parameters of all works.

LAND BANNED FOR SUBSOIL USE

- defense and national security
- 1000m off populated locality
- 400m off hydrotechnical constructions
- underground waters for drinking purposes
- transportation infrastructure
- energy/electricity infrastructure
- main pipelines
- state purposes
- 100m from cemeteries
- private property and buildings, perennial plantations
- other





- Subsoil users must give preference to Kazakhstani employees
- Intra-company transfers may not provide **more than 50%** of foreign workforce within 1 category of employees (executives, management and specialists)
- Local content within the purchased works and services (but not goods!) shall be set in the Contract/License but **may not be less than 50%** of annual volume.
- Special calculation methodology exists as approved by the authorised body.

TWO REGIMES OF SUBSOIL USE

License

1. Geological study
2. Exploration of solid minerals
3. Extraction of solid minerals
4. Extraction of common minerals
5. Subsoil spaces
6. Digging

Contract

1. Exploration and extraction of hydrocarbons
2. Extraction of hydrocarbons
3. Extraction of uranium

LICENSE

- License grants the subsoil use right.
- One license per one plot.
- One person may obtain many licenses.
- Issued licenses must be published on the [state website](#) at the date of issue
- License is terminated on the basis of: (i) expiration (ii) holder's death and the right is declared *bona vacantia* (escheat) (iii) revocation or annulment (iv) rejection by the subsoil user.
- Issuing body keeps the Licenses Registry.

CONTRACT



- Under the Contract Kazakhstan is obliged to grant the subsoil use right for a certain period to a subsoil user and subsoil user is obliged at its own account and risk to conduct the subsoil use.
- One person may enter into numerous contracts.
- Ministry of Energy keeps the Contracts Registry.
- Applicable law shall be the law of the Republic of Kazakhstan.

CONTRACT'S MANDATORY CONTENT (SELECTED)

- obligations on volume and types of exploration works under the Program
- financing education of KZ personnel during extraction
- minimum HR local content
- works and services local content requirements
- liquidating consequences
- financing scientific and technical works during extraction
- expenses on social economic development of the region during extraction
- liability for breaching the contracts

CONTRACT STAGES

- exploration stage
- preparation stages
- extraction stage

Contracts may be prolonged for a period of force majeure if subsoil user proves that such events took place.

Contracts are executed in Kazakh and Russian.

STABILISATION CLAUSE

- General: All amendments and changes in the legislation that have adverse effect for the results of entrepreneurial activities of the subsoil user **shall not be applied to the contracts that were concluded prior to** such changes and amendments
- Carve outs: The stabilisation guarantee shall not be applicable to the changes in the legislation in the areas providing (i) national security, (ii) defense capacity, (iii) environmental safety, (iii) health care, (iv) taxation, (v) customs regulations and (vi) competition protection.

TERMINATION OF THE CONTRACT

- expiration (including when the next agreement was not entered into in time, See 38.1.1)
- subsoil user's death and the right is declared *bona vacantia* (escheat)
- liquidation of the entity/subsoil user
- early termination or recognition as invalid
- Resolution of the Government to prohibit the subsoil use
- refusal by the subsoil user

INVALIDATION OF THE CONTRACT AND CONSEQUENCES

1. Auction for granting subsoil use right was announced invalid
2. Lack of mandatory content in the contract
3. Provision of falsified data when applying for subsoil use right
4. Other reasons

Invalidation starts from the execution date.

Invalidation of the Contract results into invalidation of all consequential deals which subject was the subsoil use right.

TRANSFER OF SUBSOIL USE RIGHT

- Certain licenses are non-transferrable (geological study, digging and solid mineral exploration during the first year).
- Any transfer **requires consent** of the Government. 14 exemptions in SubClause 44.2.1.

Transfers include:

- disposals,
- charging objects related to subsoil use,
- new owner of shares/securities in the subsoil user,
- succession during reorganisation,
- legal inheritance
- issue of listed securities



OBJECTS RELATED TO THE RIGHT OF SUBSOIL USE

- shares/participation interests in the subsoil user entity
- stock in the subsoil user entity
- securities confirming ownership to the above in the subsoil user entity.

Same applies to the *entity that may directly or indirectly determine* decisions of the subsoil user.

Listed securities shall not be considered as «objects». The issue of such securities was subject to the consent from the Government.

STATE'S PREEMPTION RIGHT IN STRATEGIC PLOTS

Kazakhstan has preemption right to purchase subsoil use right with regards to *strategic subsoil plot* in all contracts before any persons/entities that may have preemption rights on the basis of the laws or agreements as well as to purchase any listed securities being objects related to subsoil use right. *That means the Seller has to notify of all terms and conditions of the intended transaction and offer such transaction to Kazakhstan first.*

Strategic subsoil plots:

1. with oil reserves of more 50 mln t. or more than 15 bln cub. m. of natural gas
2. located in the Caspian (in the KZ sector)
3. any uranium deposits

Enforcement of the preemption right (i.e. purchase of the share/object) shall be made on the basis of decision by the National Management Holding or National Company (Article 46). The consideration of the issue shall be made by the competent ministry. The terms of such purchase shall not be worse than were described in the Seller's notice.



QUESTIONS

- Which competent authorities issue subsoil use licenses/sign subsoil use contracts?
- Try to find website with registry of contracts.
- Try to find websites with subsoil use licenses.
- Could COVID 19 qualify as force majeure in your opinion to prolong subsoil use contract?
- Are you happy with the language of the stability clause? Would you add more carve outs to the stability guarantee? If so, which?
- What companies are assumed by «National Management Holding» or «National Company» with regards to the preemption right?