

Permits to Use Oil and Gas Mineral Deposits in Ukraine



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On 9 April 2014 the Verkhovna Rada of Ukraine adopted the *On Entering Amendments to Several Legislative Acts of Ukraine as for Reducing the Number of Permit Documents Act of Ukraine*. The Act cancelled for about 113 permit documents but such liberalization did not cover oil and gas recovery.

According to the general rule, oil and gas recovery (as well as recovery of other mineral resources in Ukraine) are performed in case of obtaining special permit on subsoil use.

Article 11 of the *On Oil and Gas Act of Ukraine* stipulates that the use of oil and gas mineral deposits, search and survey of oil and gas deposits, their development, construction and operation of underground storage facilities for oil and gas are allowed only under special permits to use oil and gas mineral deposits, issued by authorized central executive authorities of geological survey and rational use of mineral deposits according to acting legislation. Today, such central executive authority is the State Service for Geology and Mineral Resources of Ukraine.

Special permits and their terms

Special permits to use oil and gas mineral deposits are issued to the winner of the tender unless otherwise is provided by the Cabinet of Ministers of Ukraine or by the State Service for Geology and Mineral Resources of Ukraine. The special permits are not allowed to be donated, sold or transferred otherwise. The rights given by such permits to use oil and gas mineral deposits are not allowed to be transferred to any legal or natural

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entity, including cases when they are included in the charter capital of other business entities, as well as their investments in joint activities.

Article 13 of the *On Oil and Gas Act of Ukraine* provides the following special permits to use oil and gas mineral deposits:

- on geological survey of oil and gas mineral deposits, including their research and commercial development;

- on geological survey of oil and gas mineral deposits including their research and commercial development with further oil and gas recovery (commercial development of deposits);

- on oil and gas recovery (commercial development of deposits);

- on construction and operation of underground facilities that are not related to mineral resources recovery including oil or gas underground storages and stores for wastes from oil and gas recovery and related waters.

Special permits to use oil and gas mineral deposits are issued for:

- geological survey of oil and gas mineral deposits, including research and commercial development of onshore deposits not more than for 5 years, within the continental shelf and the exclusive (maritime) economic zone of Ukraine for 10 years;

- oil and gas recovery (commercial development of deposits) within the onshore area for not more than 20 years, within the continental shelf and the exclusive (maritime) economic zone of Ukraine for 30 years;

- geological survey of oil and gas mineral deposits with further commercial development of identified ones for a term that would not

exceed the term of special permits for geological survey of oil and gas mineral deposits and oil and gas recovery (commercial development of deposits) but not more than for 20 years within onshore area and not more than for 30 years within the continental shelf and the exclusive (maritime) economic zone of Ukraine;

- construction and operation of an underground storage of oil and gas not more than for 50 years.

The oil and gas mineral deposits user who complied with the requirements and the terms stipulated by the special permit for oil and gas mineral deposits as well as agreement to use oil and gas mineral deposits properly enjoys the right to prolong such permit (Article 14 of the *On Oil and Gas Act of Ukraine*).

Procedures for granting special permits

If certain specific ways to recover hydrocarbons (for instance, to recover gas (methane) from coal deposits) are not taken into account there are two procedures to obtain special permits for hydrocarbons recovery, in particular, oil and natural gas recovery.

The first general procedure is determined by the *Procedure for granting special permits to use mineral deposits approved by the Resolution of the Cabinet of Ministers of Ukraine of 30 May 2011, No.615*.

As stated above, special permits are issued by the State Service for Geology and Mineral Resources of Ukraine on the basis of the tender (bid). The Procedure includes a number of peculiarities that enable obtaining a special permit without the tender. Some of them are theoretically possible to be applied to

oil and gas recovery (for instance, a special permit may be issued if the applicant at his own cost estimated the natural resources reserves by carrying out a geological study of a deposit, the results of which are confirmed by the Ukrainian Committee on Geology and Mineral Resources; a special permit may be issued if the applicant at his own cost provided approbation in the Ukrainian Committee on Geology and Mineral Resources on condition that the results of the mineral resources reserves were confirmed in the Ukrainian Committee on Geology and Mineral Resources within five years).

The applicant shall agree granting to use deposits with:

- the respective regional councils, Kiev and Sevastopol Cities Councils;

- the Ministry of Ecology and Natural Resources of Ukraine;

- the State Committee of Ukraine for Industrial Safety, Labour Protection and Mining Supervision (related to a geological survey with exploration and commercial development and recovery, as well as related to aims that are not connected with mineral resources recovery).

Moreover, oil and natural gas are included in the list of natural resources and their minimum reserve or prospective resources that are considered to be strategically important for the economy of Ukraine, as approved by the Resolution of the Cabinet of Ministers of Ukraine of 15 July 1997 No.742 *On Granting Special Permits for Subsoil Use Aimed at their Geological Survey and Recovery of Strategically Important Mineral Resources*. Thus, special permits for geological survey and oil and natural gas recovery are issued by the State Service for Geology and Mineral Resources of Ukraine according to the conclusion of the Interdepartmental Committee on mineral resources in accordance with the procedure for granting special permits for subsoil use. Such Committee includes the Prime Minister of Ukraine — the Head of the Committee, the Minister of Environment and Natural Resources — the First Deputy of the Head of the Committee, the Minister of Energy and Coal Industry

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- Deputy Head of the Committee, First Deputy (Deputy Head) of the Ministry of Economic Development and Trade, First Deputy of the Minister of Finance, First Deputy (Deputy Head) of the Minister of Justice, Deputy Head of the Minister of Environment and Natural Resources, the Head (Deputy Head) of the Secretariat of the Cabinet of Ministers of Ukraine, the Head of the State Service for Geology and Mineral Resources of Ukraine, the Head of the State Committee of Ukraine for Industrial Safety, Labour Protection and Mining Supervision, the Representative of the Secretariat of the Cabinet of Ministers of Ukraine.

An essential part of the special permit is an agreement to use oil and gas mineral deposits that regulates and sets out the technical, technological, organizational, financial, economic, social, ecological terms to use oil and gas mineral deposits at the respective area provided by the legislation of Ukraine and by the special permit. The Agreement is concluded between the State Service for Geology and Mineral Resources of Ukraine and the subsoil user.

According to Article 24 of the *On Oil and Gas Act of Ukraine* the special permit to use oil and gas deposits shall not be issued if:

- the applicant did not comply with the terms of this Act and the tender;

- the applied documents did not comply with the terms of the tender for obtaining special permit to use oil and gas mineral deposits;

- the applicant applied incorrect or incomplete information about himself.

Disputes that arise in case of denial to issue special permit to use oil and gas mineral deposits are settled within the court procedure.

If while performing exploration works the State Service for Geology and Mineral Resources of Ukraine reaches a reasonable conclusion that there is a deposit (deposits) of oil and gas within areas of two or more users of oil and gas mineral deposits, they shall conclude an agreement on joint exploration activities and deposit development.

Entering into the Production Sharing Agreement (PSA)

Another possible procedure to obtain special permit is to conclude the Production Sharing Agreement (PSA) between the subsoil user and the Government of Ukraine. The agreeing procedure is performed in accordance with the terms stipulated by the *On Production Sharing Agreements Act of Ukraine* and other respective agreements. The Act and the PSA terms determine the peculiarities of subsoil use, in particular, those related to providing, transferring and terminating (suspension or restriction) the right to use the subsoil.

Performing works provided by the PSA is a separate type of subsoil use that requires a special permit. Such permit is issued by the State Service for Geology and Mineral Resources of Ukraine for the period for which the PSA was concluded. In addition to this, special permits do not require additional agreeing stipulated by the Resolutions No.615 and No.742 of the Cabinet of Ministers of Ukraine.

The special permit for subsoil use on PSA terms is issued in the name of each investor — the participant of such agreement on the basis and on the terms of the concluded PSA for the period for which such an agreement was concluded within the area and on the terms stipulated by such agreement.

The duration of the special permit for subsoil use on terms of the PSA may be terminated, or suspended (including through annulment) only by the Cabinet of Ministers of Ukraine in accordance with the *On Production Sharing Agreements Act of Ukraine*.

The PSA may envisage special phases, rules and procedures for subsoil use and the performing of works while exploring the deposits of unconventional hydrocarbons. Such special phases, rules and procedures may differ from stipulated ones by legislation. In the event of any discrepancy, phases, rules and procedures for subsoil use and works performed provided by the PSA shall apply.