

Information in the extractive industries becomes transparent

On September 18, 2018, Verkhovna Rada of Ukraine adopted in the second reading and in general the draft law No. 6229 "On ensuring transparency in the extractive industries" (hereinafter - the Draft Law).

The Draft Law is adopted to fulfill Ukraine's international obligations in connection with the accession to the Extractive Industries Transparency Initiative (EITI) and the implementation of EU legislation in the area of increasing transparency in economic activities in the extractive industries.

The main objective of the Draft Law is to provide the public with access to full and objective information on payments made by economic entities operating in the extractive industries in favor of payment receipts, information on production volumes, final beneficiary owners, a list of extractive projects, etc.

With the entry into force of the Draft Law, all economic entities operating in the extractive industries, their parent companies registered in Ukraine, as well as the Ministry of Energy and Coal Mining of Ukraine (hereinafter - Ministry of Energy) and the Public Service of Geology and Subsoil of Ukraine have to disclose the relevant information in the volume and procedure specified in the law.

Thus, economic entities operating in the extractive industries and their parent companies have to submit to the Ministry of Energy and the independent administrator (will be selected by the Ministry of Energy on a competitive basis) a report on payment in profit of state (in the case of parent companies - a consolidated report). The indicated reports are also published by the entities on their own web site (if any).

In addition, at the request of Ministry of Energy, enterprises of extractive industries have also to provide or publish in the electronic submission of report and analysis system (after its creation) information on the essential terms of the agreements on the use of subsoil, together with appropriate extracts from such agreements.

The indicated reports are disclosed by the entity and its parent companies annually before September 1 of the year following the reporting period and must remain publicly disclosed for at least three years from the date of disclosure. At the same time, in accordance with the Draft Law, the report (consolidated report) is considered to be submitted in a timely and appropriate manner only in the case when the Ministry of Energy together with the independent administrator will examine it and provide the entity with notification about the receipt of the report and its compliance with the requirements, and also will publish a notice on its official website.

It is also noteworthy that economic entities that perform activities in the extractive industries on the basis of a joint venture agreement and are parties to a joint activity prepare reports on payments in favor of the state in part of the implementation of the joint venture agreement, regardless of whether payment is made by economic such entities directly or on their behalf to another participant in the joint venture and irrespective of the participation (participation share) of such economic entities in the extractive activities.

For violation of the procedure for disclosure of information provided by the Draft Law, the Ministry of Energy has the right to fine the economic entity operating in the extractive industries or its parent company. Thus, in case of non-disclosure of information or violation of the terms of disclosure, the amount of the fine is UAH 85,000.00, and for the disclosure of a report (consolidated report) containing incomplete information or violation of the established disclosure procedure, a fine of 34,000.00 UAH. In addition, in case of these violations, officials of business entities are also brought to administrative action.

The Draft Law also provides that the Ministry of Energy publishes the following information on its official website or in the electronic reporting and analysis system (after its creation):

- electronic versions of payments reports for the benefit of the state;
- electronic versions of payments reports on payments received;
- electronic versions of payments reports of the EITI;
- information on the essential terms of the agreements on the subsoil use with the corresponding extracts from such agreements and a list of all such agreements with the indication of their details (name and number, parties, date of conclusion).

The Public Service of Geology and Subsoil of Ukraine is obliged to publish and constantly update on its official website or electronic report and analysis system (if such system is available) the following information

- information on applications for special permits for subsoil use and applications for the preparation of subsoil sites for auctions for the sale of special permits for subsoil use (indicating, in particular, the date of receipt of such application, its contents, the applicant, the coordinates of the subsoil area, the stage of consideration, information on the approval or refusal to approve the application by the authorized executive bodies and local self-government bodies, the results of consideration of the application, indicating the grounds for refusal to issue a special permission to use subsoil; and
- information on issued special permits for the use of subsoil (including, in particular, the date of receipt of such an application, its contents, the applicant, the coordinates of the subsoil area, the stage of consideration, information on the approval or refusal to accept the application by the authorized executive authorities and local self-government bodies, the results of consideration of the application with indication of the grounds in case of refusal to issue a special permit for the use of subsoil).

The Draft Law enters into force after 30 days from the date of its publication, and the year of 2018 is the first mandatory reporting period.

At the same time, economic entities operating in the extractive industries are obliged, within 90 days from the date of entry into force of the Draft Law, to send to the Ministry of Energy information on the essential terms of the agreements on the use of subsoil (except for agreements on the subsoil use), together with appropriate extracts from such agreements for their publication in the established order. During the same period, the Public Service of Geology

and Subsoil of Ukraine is obliged to place copies of special permits for the use of subsoil, agreements on conditions of use of the subsoil and annexes to them, including changes to the work programs, information on applications for special permits for subsoil use, applications for the preparation of subsoil sites for auctions for the sale of special permits for subsoil use, as well as for any changes to these documents on the official web-site.

This Legal Alert is intended as a general overview of latest changes in legislation of Ukraine and does not constitute a legal advice.

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