



ICLG

The International Comparative Legal Guide to:

Mining Law 2015

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A practical cross-border insight into mining law

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The principal legislative acts governing mining activities in Ukraine are:

- (1) the Code of Ukraine on the Subsoil (the “**Subsoil Code**”);
- (2) the Law of Ukraine “On Production Sharing Agreements” dated 14 September 1999 (the “**PSA Law**”);
- (3) the Mining Law of Ukraine (the “**Mining Law**”) dated 6 October 1999;
- (4) the Law of Ukraine “On Coalbed Methane” dated 21 May 2009;
- (5) the Law of Ukraine “On the State Geological Service of Ukraine” dated 4 November 1999;
- (6) Resolution No. 615 of the Cabinet of Ministers of Ukraine (“**CMU**”) “On Approval of the Procedure for Issuance of the Special Permits for Subsoil Use” dated 30 May 2011; and
- (7) the CMU Resolution No. 594 “On Approval of the Procedure for Holding Auctions for the Sale of the Special Permits for Subsoil Use” dated 30 May 2011.

The subsoil is a layer of earth beneath the topsoil (or bottom of the water reservoirs) containing mineral resources and accessible for geological survey, exploration and production. Legal entities and individuals may be granted special permits for subsoil use (the “**special permits**”) which entitle their holders to carry out exploration and production of the mineral resources within the established boundaries of the subsoil plot.

The mineral resources are classified in two groups: (1) those of State importance (for example oil, gas, coal, metallic ores, etc.); and (2) those of local importance (for example gypsum, chalk stone, sand, etc.), according to the CMU Resolution No. 827 dated 12 December 1994. The deposits are also classified as those containing: (1) non-significant reserves; and (2) significant reserves, according to the quantitative criteria established by the CMU Resolution No. 1257 dated 11 August 2000.

1.2 Which Government body/ies administer the mining industry?

The main State authorities involved in the development of natural gas are:

- (1) the *Verkhovna Rada*, the Parliament of Ukraine – which passes primary legislation;
- (2) the Cabinet of Ministers of Ukraine (“**CMU**”) – which passes secondary legislation implementing the primary legislation;

- (3) the Ministry of Energy and Coal Industry – which is responsible for State policy in the mining sector;
- (4) the State Service for Mining Supervision and Industrial Safety of Ukraine (the “**State Service for Industrial Safety**”) – which is responsible for State policy in the sphere of the industrial safety and labour protection;
- (5) the Ministry for Ecology and Natural Resources – which is responsible for the State environmental policy and supervision with respect to the rational use of the mineral resources; and
- (6) the State Service for Geology and Subsoil of Ukraine (the “**State Geology Service**”) – which issues special permits to subsoil users.

1.3 Describe any other sources of law affecting the mining industry.

The development of the Ukrainian mining industry is performed in accordance with the State Programme of Development of the Mineral Resources in Ukraine for a Period up to 2030 (the Law of Ukraine No. 3268-VI dated 21 April 2011). The mentioned programme sets out the main goals and basic guidelines with respect to exploration and production of the mineral resources in Ukraine.

The other main sources of law also include:

- (1) the Tax Code of Ukraine (taxation of the subsoil use activities);
- (2) the Land Code of Ukraine (allocation of the land plots for the subsoil use activities);
- (3) the Water Code of Ukraine (water use issues);
- (4) the Forest Code of Ukraine (protection of forest resources); and
- (5) the Commercial and Civil Codes of Ukraine (ground rules and legal basis for contractual activities of the mining companies).

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Please note that there is no notion of “reconnaissance” in Ukrainian law, instead the term “exploration” (see next question) is used to determine the initial stages of searching for the purpose of discovery of the deposits. The exploration stage also includes pilot development and non-commercial extraction of the minerals.

2.2 What rights are required to conduct exploration?

Any investor (whether foreign or Ukrainian) wishing to conduct exploration and/or production activities in a particular area requires the special permit in order to obtain any further permits, authorisations, land use documents and approvals and begin work.

The special permit can be obtained from the State Geology Service under one of two different regimes for subsoil use in Ukraine: (1) licensing; and (2) production sharing. Under the licensing regime the special permit is, as a rule, purchased by the investor at an auction held by the Government (except in the specific circumstances mentioned below). Under the PSA regime the special permit is awarded to an investor as a result of it executing a product sharing agreement with the Government.

The Licensing Regime

The special permits are usually awarded via auction to the bidder offering the highest price. The following are notable exceptions to the need for an auction:

- if an investor already holds a special permit allowing exploration in a particular area and, having fulfilled its obligations under this permit, wishes to proceed to the development of the area (i.e., applies for the special permit for the production of minerals);
- extraction of non-significant reserves of mineral deposits; and
- exploration and extraction of minerals of local importance.

The PSA Regime

Under the PSA regime, the CMU may enter into a PSA whereby the foreign investor agrees to undertake certain mining activities at its own expense, and is entitled to the reimbursement of its expenses and to a certain share of the relevant output. PSAs are executed with the winner of a competitive tender, to the investor offering the most attractive terms of cooperation with the State. If the minerals contained in a deposit are considered to be below the established threshold of significance, the CMU may decide to enter into the PSA without such a tender.

This regime is generally the more attractive one to foreign investors, as an investor under a PSA enjoys significant benefits, including tax privileges, a “stability” clause protecting it from adverse changes in legislation, and help from the State in obtaining the necessary permits and authorisations (including the special permit for the relevant subsoil area) to perform the PSA.

2.3 What rights are required to conduct mining?

Please note that there is no legal notion of “mining” in Ukrainian law, instead the terms “production” or “extraction” are used for determining the commercial development of the deposits and extraction of the minerals.

In addition to obtaining a special permit (as mentioned in the previous section), for the extraction of the mineral resources, the subsoil user must obtain a “mining allotment” issued by the State Service for Mining Supervision and Industrial Safety. To obtain such mining allotment, a company will be required, among other things, to:

- (a) approve the estimated reserves of natural resources for a specific field;
- (b) prepare a detailed extraction plan (usually performed by Ukrainian scientific institutes) and an environmental impact assessment study; and
- (c) obtain the relevant special permit for extraction of the mineral resources.

2.4 Are different procedures applicable to different minerals?

No, generally the procedures are the same, save for the special licensing procedures applicable to precious metals and gem stones (according to the Law of Ukraine “On the State Regulation of the Extraction, Production and Use of the Precious Metals and Gem Stones and Control over Operations with them” dated 18 November 1997). Our overview also does not cover the specific procedures applicable to exploration, production and disposal of the radioactive ores according to the Law of Ukraine “On Extraction or Processing of Uranium Ores” dated 19 November 1997.

2.5 Are different procedures applicable to natural oil and gas?

Generally, the same procedures are applicable to the exploration and production of natural gas and oil. However, there is a number of legal acts (including the Laws “On Oil and Gas” No. 2665-III of 12 July 2001, “On Fundamentals of the Natural Gas Market Functioning” No. 2467-VI, dated 8 July 2010, etc.) which provide for special legal mechanisms and rules applicable only to oil and gas industry.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 Are there special rules for foreign applicants?

In general, there are no specific requirements or limitations with respect to foreign companies participating in tenders for special permits. However, as a matter of practice, a non-Ukrainian entity may face a number of bureaucratic obstacles at later stages due to the fact that the legislation was mostly drafted as a result of the needs of the Ukrainian subsoil users.

3.2 Are there any change of control restrictions applicable?

Usually there are not. However, in the below-mentioned circumstances the clearance of the Antimonopoly Committee of Ukraine may be required:

- (1) for a transaction if it would result in the market share of the parties (including their affiliates) exceeding 35 per cent; and
- (2) for the acquisition of 100 per cent of the shares in a company, if the parties to the transaction meet all of the following financial thresholds:
 - (a) the worldwide assets or sales of all of the parties to the transaction (including their group entities) exceed EUR 12 million in the financial year preceding the transaction; and
 - (b) the worldwide assets or sales of at least two parties to the transaction (including their group entities) exceed EUR 1 million each in the financial year preceding the transaction; and
 - (c) the Ukrainian assets or sales of at least one party to the transaction (including its group entities) exceed EUR 1 million in the financial year preceding the transaction.

3.3 Are there requirements for ownership by indigenous persons or entities?

No, Ukrainian law does not provide for such requirements.

3.4 Does the State have free carry rights or options to acquire shareholdings?

No, Ukrainian law does not provide for such rights of the State.

3.5 Are there restrictions on the nature of a legal entity holding rights?

The Licensing Regime

Companies, enterprises, organisations, citizens of Ukraine, foreign legal entities and natural persons may be subsoil users under Article 13 of the Subsoil Code.

The PSA Regime

Ukrainian and foreign citizens, apatrides, Ukrainian and foreign legal entities, associations of legal entities established in Ukraine or abroad, compliant with Ukrainian law may use the subsoil under PSAs. However, unincorporated associations may be subsoil users under PSAs only in the event that all of its participants are jointly and severally liable for their obligations under a PSA.

4 Processing and Beneficiation

4.1 Are there special regulatory provisions relating to processing and further beneficiation of mined minerals?

The fundamental document which provides detailed and all-embracing regulations for processing and beneficiation of minerals is the Labour Protection Rules for Crushing, Sorting and Processing Mineral Resources and Lumping Ores and Concentrates (Order No. 933 of the Ministry of Emergency Response dated 27 June 2012). It compiles requirements with respect to different methods of processing and beneficiation, and contain numerous references to important sector technical documents.

There are also a number of industry standards applicable to the processing and beneficiation of each particular type of mineral.

4.2 Are there restrictions on the export of minerals?

The Licensing Regime

Yes, as a matter of law, natural gas, precious metals and gem stones are commodities the export of which is subject to mandatory licensing. In addition, quotas are established for these minerals by the CMU on an annual basis (the most recent one being Resolution No. 950 of 25 December 2013 “On Approval of the List of Goods, Export and Import of which is Subject to Licensing and Quotas in 2014”). According to the mentioned Resolution the quotas for the export of precious metals and gem stones are equal to zero now. In other words the export of these minerals is currently prohibited. The quota for the export of natural gas is established in accordance with the annual Prognostic Balance of the Natural Gas Input and Output (which is subject to CMU approval) and during recent years the export volumes remain insignificant (about 90 million cm exported to Poland).

The PSA Regime

PSA investors are not subject to licensing or quotas when exporting the production extracted under a PSA. A PSA may require the investor to sell to the State or within Ukraine a portion of its production at world market prices, but only if such a requirement was set forth in the tender terms and conditions.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

The Licensing Regime

Article 16 of the Subsoil Code prohibits the holder of a special permit from any assignment or transfer of the subsoil use rights, as well as contributing them in kind either in the capital of subsidiary companies or the joint activity. These rights usually include the right to hire subcontractors, to dispose of the hydrocarbons produced and carry out plugging works.

However, the special permit holders are entitled to apply for re-issuance of the special permits (as a result of introducing amendments to it) from the permit holder to a new legal entity (i.e. subsidiary company, joint venture, etc.) provided that the share of the “original” permit holder in a new entity exceeds 50 per cent and the necessary equipment, property and other assets were successfully transferred to the mentioned new entity.

The PSA Regime

The PSA Law allows an investor to assign its rights and obligations, subject to the State’s consent.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged to raise finance?

The Licensing Regime

Currently, Ukrainian law only allows for the pledge of minerals (including those which are to be produced by the subsoil user in the future) and does not allow special permit rights to be pledged or booked for accounting purposes. However, a new draft of the Subsoil Code (which is expected to be adopted in the nearest future) provides for an option of pledging the rights under special permits for financing purposes.

The PSA Regime

The PSA Law does not make provision for rights under a PSA to be pledged or booked. Theoretically, it could be done with consent from the State.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

The rights to explore and produce can be granted within the same special permit ones, but they cannot be subdivided into two different special permits from the single original one.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Ukrainian law does not allow the holders of special permits to introduce their rights under the special permits in the charter funds or invest them in joint ventures. However, the situation may change once the new draft Subsoil Code is adopted, as the latter provides for such an option.

6.3 Is the holder of a primary mineral entitled to explore or mine for secondary minerals?

Yes, provided that the relevant special permit for exploration/production of the primary mineral also allows for exploration/production of such secondary minerals. The subsoil user shall be required to keep records of such minerals and estimate the reserves of such secondary minerals.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Ukrainian law currently does not expressly provide for the rights with respect to residue deposits, however, as a matter of practice, subsoil users do exercise rights over such deposits. Moreover, the Mining Law directly requires that the special permit holders utilise the mineral wastes of the mine dumps rationally for further recycling and that they employ modern technologies for that.

6.5 Are there any special rules relating to offshore exploration and mining?

Ukrainian law provides for a 200-mile exclusive economic zone (“EEZ”), which has a special legal regime in compliance with the United Nations Convention on the Law of the Sea (“UNCLOS”). In particular, the Law of Ukraine “On the Exclusive (Maritime) Economic Zone of Ukraine” dated 16 May 1995 provides that Ukraine has sovereign rights with respect to exploration, development and protection of the natural resources situated in its subsoil, as well as sovereign rights with regard to management of the economic exploration and development of EEZ.

Currently, the Ukrainian EEZ is mostly used for development of the oil and gas field. Moreover, the relevant mining activities are performed in compliance with the Safety Rules for Performance of Exploration and Production Works at Oil and Gas Deposits in the Black and Azov Seas (Order No. 1423 of the Ministry of Emergency Response dated 14 December 2012).

7 Rights to Use Surface of Land

7.1 What are the rights of the holder of a right to conduct reconnaissance, exploration or mining to use the surface of land?

Special permits only evidence the subsoil user’s rights to use the subsoil plot, however they do not provide for any land use rights, and the latter should be procured separately.

The Licensing Regime

As provided by the Land Code, a land plot can be allocated to a private entity into lease or ownership for the purposes of the exploration and/or production of minerals, only after the interested investor obtains all of the required documents, certifying its rights to use the subsoil under such land plot (i.e., first of all: (i) special permit for subsoil use; and (ii) mining allotment if necessary). As a general rule, unless the land plot is designated for an industrial purpose it may not be allocated for mining activities. Moreover, one cannot change the designated purpose of agricultural land due to an ongoing moratorium.

The PSA Regime

The PSA Law provides that the State ensures issuance to investors (including operators under the PSA) and/or facilitates issuance to the PSA investors of the land use rights documents under the PSA.

An important privilege for PSA investors is that the mentioned moratorium is non-applicable to PSA projects and PSA investors may apply for a change of the designated purpose of agricultural land plots to an industrial purpose.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have vis-à-vis the landowner or lawful occupier?

The most important obligations are listed below:

- (1) A subsoil user (as a lessee) is obliged to pay rent and any other fees and payments (as provided by a lease agreement).
- (2) A subsoil user is obliged to conduct re-cultivation of the leased/owned land plots (as provided by a lease agreement and/or Ukrainian law).

According to the Subsoil Code subsoil users shall bring the land plots back into a state acceptable for their further use. The land plots that underwent changes in their surface relief structure, soil environmental condition of the country rock and hydrologic behaviour of watersheds as a result of the subsoil use performed by the subsoil user shall be subject to re-cultivation. It shall be performed according to the working land planning designs and other documentation with respect to re-cultivation of disturbed lands, which includes removal and relocation of the upper soil layer (fertile soil layer) of the land plots.

- (3) A subsoil user is obliged to comply with the environmental regulations (as provided by a lease agreement and/or Ukrainian law).

In particular, the subsoil user shall comply with the established maximum permissible concentrations of the pollutants in the soil as approved by the State environmental and sanitary and epidemiological bodies.

7.3 What rights of expropriation exist?

Under Ukrainian law the expropriation of land is deemed to be taking over the title to the land plots and other real estate objects located thereon, owned by individuals or legal entities, for the benefit of the State or community for compensation through buyout or compulsory expropriation for the needs of the State, territorial community or society. Expropriation of lands for the purpose of subsoil use is performed in accordance with the Law of Ukraine “On Expropriation of the Private Land Plots and Other Real Estate Objects Located Thereon for Public Needs or on the Grounds of the Public Necessity”, dated 17 November 2009.

The law establishes procedures for expropriation of privately owned land plots for social needs. Either the CMU or the relevant local authorities decides upon expropriation of a land plot for location of the object relating to extraction of minerals. A land plot may be expropriated only in the event that the remuneration is paid to the land owner in advance. According to Article 4 of the mentioned law, natural persons or legal entities may not be unlawfully deprived of their rights and titles to the land plots and real estate objects located on them and compulsory expropriation may be applied only as an exception.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

In 2014, a list of key authorisations required for the commencement of exploration and mining works by the subsoil users was significantly shortened by the Law of Ukraine No. 1193-VII “On Amending Certain Legislative Acts of Ukraine with Respect to the Reduction of the Number of Permitting Documents” dated 9 April 2014. The main necessary permit areas follow:

- (1) a permit to begin hazardous works and to operate hazardous equipment, issued by the State Service for Industrial Safety (only if such equipment has not been duly certified and registered by the subsoil user);
- (2) a permit for waste management activities obtained from the local department of the State Department for Ecology and Natural Resources;
- (3) air permission permit issued by the local department of the State Department for Ecology and Natural Resources; and
- (4) an environmental impact assessment approved by the local representative bodies of the Ministry of Environment and Natural Resources and the State Sanitary-Epidemiological Service.

8.2 What provisions need to be made for the closure of mines?

According to Article 54 of the Subsoil Code, mining sites or their separate parts must be liquidated or conserved following the exhaustion of the mineral reserves, as well as in those cases, when technical and economic substantiation demonstrates that further development of a particular deposit or its separate parts would be inexpedient or impossible.

Both liquidation and conservation require that mining sites should be brought into the condition ensuring the safety of people, property, and the environment; while conservation should additionally ensure the preservation of deposits, excavations, and wells for the whole conservation period.

Liquidation and conservation must be performed in coordination with the mining control authorities and other relevant State bodies as prescribed in the Order of the State Committee of Ukraine for the Control over the Labour Protection No. 41 “On Approval of the Procedure of Co-ordination of Liquidation and Conservation of the Mining Enterprises or their Land Plots” dated 12 March 1999.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

In general, the subsoil user must ensure that no damage is done to people, property and the environment. According to the Subsoil Code, any abandonment and decommissioning activities may be performed only under control and upon the consent of the State Service for Industrial Safety and local authorities in compliance with the approved technical project documentation (which includes social and economic substantiation, technical reasons and explanations for such closure, environmental consequences and a list of measures to avoid the negative impact, suggestions with respect to future resumption of mining works, etc.). Such project documentation is subject to various approvals including environmental and technical expertise. The subsoil user is also

required to draft the complex plan for social protection of the employees, development of the social infrastructure, etc.

8.4 Are there any zoning requirements applicable?

Under the Land Code, land in Ukraine is divided, according to the purpose of its use, into several categories, each having a special legal regime. If the designated purpose of the land plot is other than industrial, it must first be changed to the industrial one before the production of minerals starts (i.e., this is not necessary for the exploration stage).

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

No, Ukrainian law does not provide for such rights.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The most important legislative acts in this sphere are as follows:

- (1) Code for the Civil Protection dated 2 October 2012 – the most recent document in the HSE sphere, establishing a legal basis for protection of the population, territory, environment and property from any emergency situations;
- (2) Law of Ukraine “On Ensuring the Sanitary and Epidemiological Safety of the Population” dated 24 February 1994 – determines the rights and obligations of the State bodies, companies, organisations and individuals with respect to ensuring the sanitary and epidemiological well-being of the population, provides for the State sanitary and epidemiologic supervision (control) in Ukraine;
- (3) Law of Ukraine “On Labour Protection” dated 14 October 1992 – the fundamental document in labour protection sphere; and
- (4) Law of Ukraine “On Fundamentals of the State Supervision (Control) in the Sphere of Commercial Activity” dated 5 April 2007 – establishes the basic principles and procedures for performance of different types of State supervision (control).

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

When carrying out the geological survey, the owner/manager/employer shall ensure the location of the extracted minerals in a way precluding their negative impact on health and safety. During extraction activities the works must be conducted in a way that is safe for people, property and the environment. The Mining Law provides for numerous HSE requirements to the performance of the mining activities.

Moreover, the employees of the mining companies are also required (among others):

- (a) to know and fulfil the requirements of the mining legislation, technical documentation and safety rules;
- (b) not to expose people’s life and health to danger;

- (c) to inform the manager or dispatcher of any accidents and emergencies, give warning to people and bring the employees and other people out of the dangerous areas; and
- (d) constantly monitor the air and water condition at the site.

11 Administrative Aspects

11.1 Is there a central titles registration office?

Ukrainian law does not provide for a separate registration of rights under the special permit other than at its original issuance.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

The subsoil use rights under the special permits may be suspended or terminated only by courts (as initiated by the State Service for Geology or other State bodies for a number of reasons provided by the Subsoil Code). Disputes between private entities and Government authorities (regulators) are considered by the first instance administrative courts in accordance with the Code on Administrative Proceedings. Decisions of the first instance administrative court may be further appealed to the regional administrative courts of appeals. In turn, decisions of the latter may be further appealed to the Higher Administrative Court of Ukraine. Moreover the last appeal option in an administrative case is the appeal to the Supreme Court of Ukraine.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Constitution of Ukraine provides that land, its mineral resources, atmosphere, water and other natural resources within the territory of Ukraine, the natural resources of its continental shelf, and the exclusive (maritime) economic zone, are the object of the right of property of the Ukrainian people. Ownership rights on behalf of the Ukrainian people are exercised by the bodies of State power and bodies of local self-government within the limits determined by this Constitution. Moreover, according to the Constitution, every citizen has the right to use the natural objects of the people's right of property in accordance with the law.

Thus, the subsoil is the exclusive property of the people of Ukraine and may only be transferred by the State into use (but not ownership) for exploitation and/or extraction of natural resources by Ukrainian and foreign legal entities and individuals. However, a person (company) that obtained the right to extract natural resources obtains title to all natural resources extracted by it.

12.2 Are there any State investment treaties which are applicable?

As of today, Ukraine executed bilateral investment treaties with more than 50 countries, including the Netherlands, the United Kingdom, the USA, Switzerland, Germany, the United Arab Emirates, etc. The text of these treaties can differ in terms of defining an investor, an object of investment, protected rights of an investor, and the procedure of

investment protection. However, all the treaties stipulate the right of an investor to apply for international investment arbitration to protect their rights and investments. An investment is usually defined as the property and property rights, including corporate shares, intellectual property and right of claims. Moreover the above-mentioned treaties are usually applicable to investment protection of the rights under the special permits.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

The Licensing Regime

The principal mechanisms for taxing exploration and mining activities are as follows:

- (a) CPT (Corporate Profit Tax), at 18 per cent in 2014 and onwards.
- (b) VAT, which will be 20 per cent until 2015 and 17 per cent thereafter.

The PSA Regime

The above taxes (CPT and VAT) also apply to the production sharing regime. However, the investor enjoys the following taxation privileges for the duration of the PSA:

- (i) the investor may pay CPT in kind, if the PSA provides for this; and
- (ii) profits received under the PSA are exempt from the profit repatriation tax.

13.2 Are there royalties payable to the State over and above any taxes?

The subsoil users are required to pay the subsoil use charge per volume of the extracted minerals.

$$\text{The Subsoil Use Charge} = \text{Volume} \times \text{Price} \times \text{Rate} \times \text{Index}$$

Volume is volume of the extracted minerals.

Price (per unit of minerals) calculated in a manner provided by the Tax Code of Ukraine. (For example – the price for natural gas is equal to the average customs value of the natural gas imported into Ukraine over the quarter; the price of oil is equal to the average price of 1 barrel of Urals oil at the International Petroleum Exchange (London); the price of ferrous, non-ferrous, alloyed metals is equal to the average price of 1 tonne of the relevant ores as established by the Ministry of Economy on the basis of the prices published in the monthly world commercial information overview.) If the calculated price is lower than the “**estimated value of the minerals**” as calculated on the basis of profitability index approved by the State Commission on Minerals Reserves, it is the estimated value of the minerals which shall be applicable instead of the Price.

Rate is established by the Tax Code for each separate type of mineral resources.

The established Rates do not exceed 5 per cent per tonne, save for oil and natural gas, where the Rates vary from 11 per cent to 39 per cent per tonne.

Index is applicable only in the cases provided by the Tax Code and depends on the type/state of the deposit, which is being developed. The Index mostly varies from 0.5 up to 0.97.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Article 9¹ of the Subsoil Code provides that the local authorities (i.e., so-called “oblast” councils) are entitled: (1) to grant the subsoil plots for exploration and development of the mineral resources of local significance; (2) to approve the subsoil plots granted for exploration and development of the mineral resources of State significance; (3) to supervise the subsoil use and to terminate the right of subsoil use in case of violations. For the purpose of performance of the above functions, each of the local councils adopts its own rules and procedures (which nevertheless must be in line with the national legislation).



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14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

In the energy sphere, Ukraine is a party to a number of agreements with the EU, in particular the Energy Charter Treaty (including the Protocol on Accession of Ukraine to the Energy Community) and the EU-Ukraine Association Agreement. In particular, according to the Ukrainian-European arrangements, the requirements of the third energy package must be implemented in Ukraine in the coming years.

The international treaties relating to mining activities also include: (1) multilateral treaties – such as the Agreement on Cooperation in the Sphere of Studying, Exploration and Use of the Mineral Resources – as executed by CIS countries on 27 March 1997; and (2) bilateral treaties in the sphere of geology and rational use of subsoil (including those signed with the UK, Mongolia, Syria, Kazakhstan, etc.). These agreements mainly establish fundamental principles of the parties’ cooperation, support and communication in the geological sphere.



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