

Ukraine: Recent Changes to Production Sharing Agreements Law

Over the past few months the Ukrainian Parliament has made two important changes to the legislative framework governing production sharing agreements for exploration and extraction of minerals. These amendments have been primarily introduced into the Law of Ukraine “On Production Sharing Agreements” (the “PSA” and “PSA Law”).

The first amendment, which came into effect on 17 November 2011, has eliminated the requirement that an area of the investor’s interest be included in a special list of subsoil areas eligible for production sharing tenders before any such tender could be initiated.

The second amendment, which came into effect on 11 December 2011, provides that the conditions of a PSA tender may actually require and oblige investors to develop tendered subsoil areas jointly with a state-owned company, meaning that the latter will have to be included into a PSA as a separate party. In this case, a winner of the PSA tender would usually be chosen as an operator and would have to bear with and carry the state company throughout the project. Notwithstanding that, the PSA is still to be negotiated and concluded with the State, represented by the Cabinet of Ministers of Ukraine.

The wording of the second amendment reiterated once again that the PSA tender conditions may contain provisions that would require investors to sell the produced minerals (incl. hydrocarbons) within Ukraine. As the effective PSA Law guarantees, if sold locally the price for the minerals produced under the PSA shall correspond to that of the international markets. In light of the foregoing, the latter “local sale” provision of the PSA Law should not be confused with the domestic supply obligation, which (i) applies to joint projects (JV or farm-in) with state companies where the state companies have at least 50% of the effective stake / contributions and (ii) requires the state companies to supply all of the produced natural gas to residential consumers at a subsidised (cheaper) price.

Laws: No. 3959-VI “On Amendments to Certain Legislative Acts Concerning the List of Subsoil Areas”, dated 21 October 2011 and No. 4053-VI “On Amendments to the Law of Ukraine “On Production Sharing Agreements” Concerning Improvement of the Mechanism of Performance of Production Sharing Agreements”, dated 17 November 2011.