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**Overview of Ukraine's Legal Subsoil Licensing Regime in the Upstream Oil & Gas Sector by Dr. Irina Paliashvili, Managing Partner, RULG-Ukrainian Legal Group**

The legal regime for upstream activities in Ukraine continues to be divided into more traditional **Licensing Regime**, with Subsoil Licenses (referred to in legislation as "special permits" to use Subsoil) generally offered at auctions, and the alternative **PSA Regime** under which the investor obtains the rights to use Subsoil under a PSA concluded with the State.

The main legal instruments for Licensing Regime available to investors are either directly obtaining the Subsoil License (accompanied by the Licensing Agreement with the State) or concluding a Joint Activity Agreement (**JAA**) with the existing License Holder. Over the years, the Licensing Regime and its legal instruments have been consistently compromised by the GOU and Ukrainian courts, with the rights of investors threatened, Subsoil Licenses and JAAs challenged or cancelled.

It is not surprising that investors, who never had much trust in the Licensing Regime to begin with, are abandoning it in favor of the PSA Regime. There are close to none JAAs being signed, and no attractive Subsoil Areas are offered at auctions. The only still viable opportunity under the Licensing Regime is for investors to acquire companies holding Subsoil Licenses, but such acquisitions are complicated by the fact that many companies-License Holders are not for sale because they hold various other unrelated rights and assets. They would like, however, to transfer their Subsoil Licenses to a subsidiary and then sell the subsidiary, but the current Subsoil Code prohibits such a transfer. Therefore, only the company License Holder itself may be acquired in order to take possession of its Subsoil License.

We do not expect any serious changes in the Licensing Regime until the new version of the Subsoil Code is adopted, which may take place sometime in 2013.

Those readers who are interested in Licensing Regime can get more details from our previous articles [http://www.rulg.com/publications\\_resources.aspget](http://www.rulg.com/publications_resources.aspget)

*RULG-Ukrainian Legal Group is a full-service law firm based in Kiev and Washington, D.C. that provides comprehensive legal support to international corporate clients doing business in Ukraine and other CIS countries. One of the RULG's key practice areas is upstream oil & gas, under both the Licensing Regime and the PSA Regime. RULG co-authored the production sharing legislation (two laws and a number of regulations) for Ukraine, which provided the legislative basis for the first ever Ukrainian PSA signed in October 2007 and for subsequent PSA Tenders. Detailed information about RULG practice is available at [www.rulg.com](http://www.rulg.com). Dr. Paliashvili can be contacted at [irinap@rulg.com](mailto:irinap@rulg.com)*

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