

## **LAW OF UKRAINE**

### **On Production-Sharing Agreements**

Including the amendments and addenda  
pursuant to the Laws of Ukraine  
N 429-IV dated 16 January 2003,  
N 3370-IV dated 19 January 2006,  
N 799-VI dated 25 December 2008,  
N 2562-VI dated 23 September 2010

Please also see  
Constitutional Court Decision  
N 17-rp/2001 dated 6 December 2001

The purpose of this Law is to create favorable conditions for investment in prospecting, exploration and extraction of mineral resources within the territory of Ukraine, its continental shelf and the exclusive (maritime) economic zone on the terms and conditions set forth in production-sharing agreements.

### **Section I. General Provisions**

#### **Article 1. Definition of Terms**

The terms used in this Law have the following meanings:

“production” means mineral resources of national or local significance (mineral raw materials) extracted (produced) during development of mineral deposits;

“produced production” means the total amount of production extracted under the production-sharing agreement and delivered to the point of measurement;

“cost-recovery production” means the portion of the produced production which is transferred to the investor for ownership as reimbursement of its costs;

“profit production” means the portion of the produced production which is shared between the investor and the State, and is defined as the difference between produced production and cost-recovery production;

“point of measurement” means the point where the produced production is measured and divided into cost-recovery and profit production pursuant to the production-sharing agreement;

“low mineral reserves” means the mineral reserves identified in accordance with the criteria stipulated by the Cabinet of Ministers of Ukraine;

“significant mineral reserves” means the mineral reserves exceeding low mineral reserves.

## **Article 2. Relations Governed by This Law**

1. This Law shall regulate the relations arising in the process of concluding, implementing and terminating production-sharing agreements and stipulate the basic legal requirements for such agreements, as well as the specifics of the legal relations pertaining to the use of subsoil on production-sharing terms.

2. The relations arising during prospecting, exploration and extraction of mineral resources, sharing of produced production, as well as transportation, treatment, storage, processing, use, sale or other disposal thereof, shall be governed by a production-sharing agreement, which shall be concluded pursuant to this Law.

3. The rights and obligations of the Parties to a production-sharing agreement shall be stipulated pursuant to the civil law of Ukraine, subject to the peculiarities set forth in this Law.

4. The legislation of Ukraine on production-sharing agreements, pursuant to the Constitution of Ukraine, shall be applied subject to the peculiarities stipulated by this Law. The relations not regulated by this Law, including those arising during the use of land, subsoil and other natural resources, shall be regulated by the Constitution of Ukraine and the relevant legislative acts of Ukraine. If the legislative acts of Ukraine prescribe rules other than those stipulated by this Law, the rules of this Law shall apply.

## **Article 3. Relations Between the Bodies of Executive Power and Local Self-Government During Implementation of This Law**

1. While implementing this Law, the bodies of executive power and local self-government shall operate on the basis of interaction and cooperation, within the scope of their powers, to protect the interests of the Ukrainian people, the State, regions and territories, and to ensure environmental protection and rational use of the subsoil and other natural resources of Ukraine.

2. The Cabinet of Ministers of Ukraine, within the scope of its powers, shall coordinate the activity of the bodies of executive power and local self-government during conclusion, implementation and termination of production-sharing agreements.

## **Article 4. Definition of a Production-Sharing Agreement**

1. According to a production-sharing agreement, one party, Ukraine (hereinafter-- "the State"), assigns the other party, the investor, to prospect for, explore and extract mineral resources in the designated subsoil area(s) and to perform the works related to the agreement for a specified period of time, whereas the investor undertakes to perform the assigned works at its own cost and risk, with further compensation of the costs and receipt of payment (remuneration) in the form of a portion of the profit production.

2. A production-sharing agreement may be bilateral or multilateral, i.e. several investors may be parties thereto, provided that they incur joint and several liability for the obligations stipulated by such agreement.

3. The State shall ensure the issuance to the investors, in compliance with established procedure, of approvals, quotas, special permits to use subsoil and licenses to carry out the activity associated with the prospecting (exploration) and operation of mineral deposits, acts for the provision of mining allotments, the documents certifying the right to use land, as well as other permits, authorizations, licenses related to the use of subsoil, performance of the works, construction of the structures stipulated by a production sharing agreement.

Said documents shall be issued pursuant to the requirements of Ukrainian legislation for the term of the agreement, unless otherwise stipulated by the laws of Ukraine, and shall lose effect or be amended under the terms and conditions set forth in the agreement.

### **Article 5. Parties to a Production-Sharing Agreement**

1. The Parties to a production sharing agreement shall be the investor(s) and the State represented by the Cabinet of Ministers of Ukraine.

The permanent inter-departmental commission (hereinafter -- "the Inter-Departmental Commission") shall be established by the Cabinet of Ministers of Ukraine and shall consist of representatives of the state bodies, the bodies of local self-government and People's Deputies of Ukraine, and shall be authorized to resolve the matters related to the organization of conclusion and implementation of production-sharing agreements.

If necessary, the appropriate production and scientific organizations, as well as experts and advisors, will be involved in the work of the Inter-Departmental Commission.

The working body of the Inter-Departmental Commission shall be the central body of executive power in the domain of exploration and use of subsoil.

The Regulations for the Inter-Departmental Commission shall be approved by the Cabinet of Ministers of Ukraine.

2. Citizens of Ukraine, foreigners, persons without citizenship, legal entities of Ukraine or other states, or associations of legal entities set up within or outside Ukraine that have the appropriate materials, technological and economic capabilities or the appropriate qualification for the use of subsoil, as certified by the documents issued in accordance with the laws (procedures) of the investor's country, may be the investors.

3. In case an investor under the agreement is an association of legal entities which is not a legal entity, the participants of such association incur joint and several liability for the obligations stipulated by the production-sharing agreement.

## **Article 6. Conditions for Concluding Production-Sharing Agreements**

1. Under this Law, production-sharing agreements may be concluded with respect to specific subsoil area(s) limited in space and coordinates, within which mineral deposits or parts thereof of national and local significance are located, including the subsoil areas within the continental shelf and the exclusive (maritime) economic zone of Ukraine set forth in the List of subsoil areas (mineral deposits) which may be granted for use on the conditions stipulated by production-sharing agreements.

Subsoil (mineral deposit) areas shall be granted for use together with a land plot of State-owned or municipal lands. If the land plots required for the use of subsoil under production sharing agreements are owned by individuals or legal entities, or if they are municipal property, the State shall assume the title to these land plots in accordance with the law.

2. The List of subsoil areas (mineral deposits) which may be granted for use on the conditions stipulated by production-sharing agreements (hereinafter -- "the List") shall be approved by the Cabinet of Ministers of Ukraine upon joint submission by the Inter-Departmental Commission and the appropriate central bodies of executive power, subject to its previous approval by the Verkhovna Rada of the Autonomous Republic of Crimea or a local self-government body, and shall be published in the official publications of Ukraine and foreign mass media.

An investor may file with the Cabinet of Ministers of Ukraine or the Inter-Departmental Commission a proposal concerning inclusion of a specific area in the List. The investor shall be notified of the outcomes of the consideration of a filed proposal within three months.

A specific subsoil area shall be included in the List on the basis of any of the following criteria:

- losses will be incurred by the subsoil users and the State for objective reasons in case of further development of mineral deposits, if the development of such mineral deposits can yield a substantial amount of extracted mineral resources and conservation or liquidation of the developed facility may result in negative social repercussions and financial (material) losses;
- non-availability of State financial and technical means required for the development of new big mineral deposits when such development provides for the nation-wide level of extraction of mineral resources in Ukraine necessary for social development and economic security of Ukraine;
- the need to use special costly development technologies with respect to hard-to-extract and significant mineral reserves located in complicated mining and geological conditions or residual in the deposits under development, as well as the need to prevent loss of fuel, energy or mineral raw materials in the subsoil;
- the need to provide regions with their own fuel and energy raw materials, or to create new employment in low-employment districts;

- the need to introduce advanced technologies and progressive equipment to ensure effective prospecting, exploration and development of perspective under-explored mineral deposits;
- the need to develop mineral deposits in especially complicated conditions (subsoil areas and deposits in sea regions, hard-to-extract and exhausted deposits, or regions where oil or gas deposits have not been assessed);
- the need to perform additional or advanced exploration of a subsoil area.

The Verkhovna Rada of Ukraine shall approve a List of the subsoil areas of scientific, cultural or natural-reserve significance which cannot be granted for use on the terms and conditions in production-sharing agreements not later than three months from the date of entry into force of this Law.

3. It shall be prohibited to introduce changes to the lists of subsoil areas (mineral deposits) stipulated by this Article and approved in compliance with the established procedure in relation to the subsoil areas for which an agreement was concluded or a tender for concluding a production-sharing agreement was announced, or negotiations were held by the Inter-Departmental Commission or its working body concerning the conclusion of the agreement.

4. A production-sharing agreement shall be concluded with the winner of a tender held in compliance with the procedure stipulated by this Law.

A tender shall be considered as accomplished in the case when at least one investor files its application for participation, if the investor has complied with all conditions of the tender.

5. Upon the resolution of the Cabinet of Ministers of Ukraine and the body of local self-government, a production-sharing agreement can be concluded without tender in relation to subsoil areas with low mineral deposits as certified by conclusions of the relevant government bodies.

If an investor that holds a license to use subsoil and has commenced the activities in accordance with the terms and conditions stipulated therein wants to enter into a production sharing agreement, the agreement (bilateral or multilateral) can also be concluded without holding a tender on the basis of a decision of the Cabinet of Ministers of Ukraine.

## **Article 7. Holding a Tender for Concluding a Production-Sharing Agreement**

1. A decision on holding a tender for conclusion of a production-sharing agreement shall be made by the Cabinet of Ministers of Ukraine, and shall indicate the following:

- term and procedure of the tender;
- subsoil areas (mineral deposits, parts of mineral deposits) for which the tender for the conclusion of a production-sharing agreement is announced (hereinafter -- "subject of the tender"), including geographic coordinates of an operation area, as well as subsoil use depth restrictions;
- the conditions of the tender (subject to the specifics of the subsoil area), indicating:
  - the list and deadlines of the works to be performed at the subject of the tender;
  - minimal amount of investment;
  - basic production-sharing criteria;
  - peculiarities of the terms and conditions set forth in the production-sharing agreement by the State;
  - optimal economic, technological, environmental or other indices (measures) for rational use of the subsoil;
  - all essential requirements of the State with respect to the conditions and performance of the works stipulated by the production-sharing agreement;
  - the deadline for filing the applications for participation in the tender;
  - amount of the tender participation fee;
  - the list of the tender documentation to be drafted by the Inter-Departmental Commission, and the procedure for providing bidders with such documentation.

In certain cases, tender conditions may stipulate the requirements for sale exclusively in the territory of Ukraine of the production produced and acquired by the investor into ownership.

The initial tender conditions shall be drawn up by the working body of the Inter-Departmental Commission on the basis of feasibility studies approved by the Inter-Departmental Commission, and shall be approved by the body of local self-government.

2. In addition to the requirements set forth in part one of this Article, the tender announcement shall indicate:

- the decision of the Cabinet of Ministers of Ukraine on the basis of which the tender is held;

- the address to be used for filing applications for participation in the tender;
- an exhaustive list of the materials (documents) and information to be submitted by investors;
- details of the bank account to be used for transferring the tender participation fee.

3. Within two months of the date of adoption of the decision to hold a tender, the Inter-Departmental Commission shall draw up and approve the tender documentation, publish tender announcements in the official publications of Ukraine and foreign mass media, and perform other functions relating to tender organization within the scope of its powers, as established by the Cabinet of Ministers of Ukraine.

4. The period between the publication of the announcement of a tender for conclusion of a production-sharing agreement and the deadline for submission of the applications for participation in the tender shall not be less than three months.

5. Investors shall pay the fee for participation in the tender for conclusion of a production-sharing agreement, the amount and the procedure for payment of which shall be stipulated by the Cabinet of Ministers of Ukraine.

6. The time for holding the tender shall not exceed three months from the date of expiration of the deadline for submission of tender applications.

7. The investor's application for participation in the tender shall meet the tender conditions, and shall contain:

- information about the investor or investors (full name, citizenship, place of residence, profession - for citizens; name of legal entity or association of legal entities, the addresses of their seats, the country under the laws of which the legal entity or the association of legal entities is registered, principal type of activity stipulated by the charter, and the amount of its charter capital) certified by documents;
- brief information on experience in using the subsoil, as well as information on the technical and financial capabilities for performance of the works and on the technologies which will be applied during the use of subsoil, certified by documents;
- program of the works to be performed on the subsoil area, including those related to observance of the basic conditions of the tender, indicating subsoil and environment protection measures and dates for initiation and termination of the works;
- amounts and types of investment;
- additional proposals concerning performance of the tender conditions;
- other materials and information stipulated by the tender conditions.

8. The Inter-Departmental Commission shall register all timely submitted investor applications on the day of receipt in compliance with the procedure stipulated by the Cabinet of Ministers of Ukraine.

9. The Inter-Departmental Commission shall consider and assess the registered applications and the enclosed materials pursuant to the criteria set forth in this Article.

On the basis of consideration and assessment of the submitted materials, the Inter-Departmental Commission shall prepare and submit to the Cabinet of Ministers of Ukraine the conclusions and proposals concerning identification of the winner of the tender.

10. The winner of the tender shall be identified by the Cabinet of Ministers of Ukraine within the term stipulated by clause 6 of this Article, taking into consideration the proposals of the Inter-Departmental Commission.

In determining the winner of the tender, preference shall be given to the investor who complies with the tender conditions pursuant to the following principal criteria:

- the program of works to be performed on the subsoil area ensures the most rational use of natural resources;
- the most effective technological solutions are employed in performance of the works;
- provision is made for optimal protection of the environment;
- the investment terms are the most attractive;
- the investor has sufficient financial support and international experience for performing the program of works and investments set forth in detail in the conditions of the tender or tender documentation.

11. Tender results shall be published in the official publications of Ukraine, and each participant in the tender shall be informed of these results.

12. Not later than twelve months from the date of publication of the tender results, a production-sharing agreement shall be concluded with the winner of the tender pursuant to the procedure and conditions stipulated by this Law. Upon the investor's written request, this term can be extended for six months.

## **Section II. Conclusion of Production-Sharing Agreements**

### **Article 8. Requirements for a Production-Sharing Agreement**

1. A production-sharing agreement shall be concluded in writing, and shall meet the requirements of the tender for conclusion of the agreement, as well as the requirements of this Law.

2. A production-sharing agreement shall stipulate: a list of types of the investor's activity and a program of mandatory works, indicating performance deadlines, scopes and types of financing, technological equipment and other indices which shall not be lower than those proposed by the investor in the tender application, as well as other essential terms and conditions.

The essential terms and conditions of a production-sharing agreement shall be:

- 1) the names of the Parties to the agreement and the relevant contact information;
- 2) a description of the subsoil area (mineral deposit) with respect to which the agreement is concluded, including geographic coordinates of the operation area, and depth restrictions on industrial subsoil development;
- 3) the conditions for providing a land plot for the needs associated with subsoil use, and a subsoil area;
- 4) a plan for restoration of the lands damaged in the course of prospecting, exploring and extracting mineral resources;
- 5) type(s) of subsoil use;
- 6) a list, scopes and deadlines for performance of the works stipulated by the agreement;
- 7) the quality requirements for the works performed under the agreement;
- 8) the rights and obligations of the Parties, in particular the investor's rights to use the land, subsoil and other rights, as well as the investor's obligations stipulated by part five of this Article;
- 9) procedure for the parties to negotiate annual budgets and programs of the works the investor undertakes to perform;
- 10) the conditions for using mineral resources;
- 11) the procedure for determining the value of extracted mineral resources;
- 12) the procedure for making payments for the use of subsoil and the amount of the fee for the geological exploration works accomplished at the expense of the State budget;
- 13) the point of measurement;
- 14) the investor's obligation to deliver the produced production to the point of measurement;
- 15) the conditions for calculating the amounts of cost-recovery production;
- 16) composition of the costs to be reimbursed with the cost-recovery production;

- 17) the procedure and conditions for sharing the profit production between the State and the investor;
- 18) the procedure and term for transferring to the State its portion of the profit production. The agreement may stipulate transfer to the State of a monetary equivalent of the portion of the profit production which belongs to the State;
- 19) the procedure for transferring the title to the produced production;
- 20) the procedure by which the investor obtains the portion of the profit production which belongs to the investor pursuant to the agreement;
- 21) the procedure for transferring the title to the property from the investor to the State;
- 22) the procedure for supervising performance of the works stipulated by the agreement, observance of other terms and conditions of the agreement; deadlines, forms and content of the reports, information and accounts to be submitted by the investor to the Inter-Departmental Commission;
- 23) the requirements regarding return of subsoil areas and land plots granted for the purposes related to the use of subsoil upon termination of the agreement in case of early termination thereof or completion of individual stages of works, as well as the deadlines and procedure for returning these areas;
- 24) conditions for amendment, early termination or extension of the agreement;
- 25) conditions for assignment by the investor of the rights and obligations stipulated by the agreement;
- 26) requirements regarding rational and comprehensive use and protection of the subsoil and the environment, safety and protection of the personnel involved in the works stipulated by the agreement;
- 27) the procedure for conserving or liquidating mining facilities;
- 28) the term of the agreement, date, place of signing, and the procedure for its entry into force;
- 29) liability of the Parties to the agreement and the means to secure it;
- 30) dispute settlement procedure;
- 31) procedure to be followed by the investor in order to transfer to the State the property that was created or acquired by the investor for the purposes of performing a production sharing agreement and the title to which was assumed by the State in accordance with the Law;
- 32) other essential provisions stipulated by this Law.

Other terms and conditions may be stipulated by a production-sharing agreement upon agreement between the Parties.

3. The essential terms and conditions stipulated by this Article, except those indicated in clauses 1, 2, 5, 14 of part two of this Article, shall be stipulated exclusively by the production-sharing agreement, subject to the requirements set forth in this Law.

4. A production-sharing agreement shall include as its integral parts the annexes which the Parties refer to in the agreement, in particular an exhaustive list of the rules, norms, standards for performing the works associated with the use of subsoil, protection of the environment, the use and processing of mineral raw materials, calculations, plans, lists, programs, tables, etc., and, if necessary, conclusions of the experts (Expert Evaluation Statements), scientists and specialists involved in drafting the agreement.

5. A production-sharing agreement shall set forth the following obligations of the investor:

to grant preference to the products, works, services and other material values of Ukrainian origin under equal conditions with respect to the price, performance deadline, quality and compliance with international standards;

to employ (hire) mainly Ukrainian citizens in the territory of Ukraine for the needs indicated in the agreement, and to train them within the scope stipulated by the agreement.

6. For the purpose of coordinating the activities of the Parties during performance of a production-sharing agreement, the agreement may stipulate the setting-up of a Coordination Committee.

7. A production-sharing agreement shall specify the documents certifying the parties' powers to sign the agreement.

## **Article 9. Special Terms and Conditions of Production-Sharing Agreements**

1. Production-sharing agreements made with respect to prospecting, exploration and extraction of hydrocarbon raw materials, as well as the use of significant mineral deposits, in addition to the essential terms and conditions specified in Article 8 of this Law, shall also stipulate the following essential conditions:

annual declaration of extraction characteristics;

the procedure for using geological, geophysical and other information;

the procedure for and peculiarities of recording the expenses of industrial and technological needs;

the procedure and term for evaluating the environmental pollution level in the subsoil exploitation area (the land plot granted for the needs related to the use of subsoil) as of the time of conclusion of the agreement;

the scopes and time-frames for the implementation of environmental protection measures;

the procedure for negotiating and approving annual work programs, in particular the programs for implementing petroleum operations;

the conditions for reliable storage of the State's portion of the extracted mineral resources prior to its transfer to the State;

the conditions for insuring property risks, including loss of produced mineral resources as a result of spillover, flood, fire;

the conditions for the exclusive risk in the course of development of deposits.

2. If a foreign investor is a party to a production sharing agreement, it shall have its representative office registered in Ukraine within three months after the conclusion of the production sharing agreement.

If two or more investors participate in a production sharing agreement, they shall designate from among themselves one investor - agreement operator to represent their interests in relations with the State. If a foreign investor is the agreement operator, it shall have its representative office registered in Ukraine within one month.

The agreement operator and/or foreign investor's representative office in Ukraine shall have all powers prescribed for the investor by the production sharing agreement.

The relations between the State and a foreign investor concerning a production sharing agreement shall be implemented through its representative office in Ukraine.

#### **Article 10. Drafting a Production-Sharing Agreement**

1. The investor shall draft a production-sharing agreement in accordance with the requirements set forth in this Law.

In certain cases, pursuant to the decision of the Cabinet of Ministers of Ukraine, an agreement can be drafted by the Inter-Departmental Commission.

2. A draft production-sharing agreement shall be prepared in the Ukrainian language.

#### **Article 11. Registration and Approval of a Draft Production-Sharing Agreement**

1. A draft production-sharing agreement shall be prepared within three months from the day of the official publication of the results of the tender, and shall be registered by the Inter-Departmental Commission.

2. Drafts of production sharing agreements shall be subject to mandatory State expert evaluation in respect of financial, legal, environmental and other matters in accordance with the legislation.

3. Not later than three months from the day of registration of a draft production-sharing agreement, the Inter-Departmental Commission shall provide the investor with the conclusions, comments, results of the accomplished expert evaluations or a new version of the agreement, on the basis of which the investor shall revise the agreement or prepare its conclusions and comments on the new draft agreement.

The new version of the draft agreement shall be reviewed and approved again by the Parties.

Additional or repeated expert evaluations can be carried out upon the initiative and at the expense of one of the Parties, with respect to the matters which have not been agreed upon by the Parties, within six months from the day of registration of the first version of the draft agreement. The investor can contact well-known international non-governmental organizations or specialized scientific organizations with a request for an expert evaluation (scientific, technical, etc.) of the matters that require additional substantiation.

4. A draft production-sharing agreement shall be approved by the body of local self-government in the territory of which the subsoil area to be transferred for use under the agreement is located.

The Inter-Departmental Commission shall ensure and coordinate the works related to the drafting and approval of the draft agreement.

5. Upon final approval and review, a draft production-sharing agreement shall be initialized (approved) and registered again by the Inter-Departmental Commission and thereafter submitted (sent) to the Parties to the agreement for signing.

6. The procedure for registering the initial and final versions of the draft production-sharing agreement shall be established by the Cabinet of Ministers of Ukraine.

## **Article 12. Peculiarities of Drafting and Approving Multilateral Production-Sharing Agreements**

1. The Cabinet of Ministers of Ukraine shall cooperate in the timely preparation of the documents stipulated by part three of Article 4 of this Law in the names of all investors-participants of the production-sharing agreement, and shall be directly responsible for observance by the State of the terms and conditions of the agreement.

2. A draft production-sharing agreement shall be approved by each investor. If one of the investors refuses to enter into the agreement, the agreement can be concluded upon consent of the Parties with other participants thereof after the appropriate amendments are made to the agreement.

### **Article 13. The Procedure for Signing a Production-Sharing Agreement**

1. A production-sharing agreement shall be signed by the authorized representatives of the Parties.
2. The Inter-Departmental Commission shall verify the powers of the investors' representatives to sign the agreement.
3. If a foreign investor is a Party to the agreement, the production-sharing agreement shall be made in the Ukrainian and English languages. The translation of the final version of the draft agreement into the English language shall be made by the party that drafted the agreement. The Ukrainian and English versions of the agreement shall have equal legal force.
4. The authenticity of all copies of the production-sharing agreement to be signed by the Parties shall be ensured by the Cabinet of Ministers of Ukraine.

### **Article 14. The Term of a Production-Sharing Agreement**

1. The term of the production-sharing agreement shall be specified by the Parties, but shall not exceed fifty years from the date of signing.

The terms for prospecting, exploration and extraction of mineral resources, as well as the procedure and conditions for extending these terms, shall be specified within the framework of the term of the agreement. If the investor does not initiate performance of the agreement within the term stipulated by the agreement, the State shall have the right to refuse to perform the agreement (terminate the agreement) and require indemnification of damages in compliance with the procedure stipulated by Article 31 of this Law.

2. The term of the production-sharing agreement determined in accordance with part one of this Article, upon the investor's initiative and provided that the investor has performed its obligations, can be extended by concluding an additional agreement. The licenses and other permits issued for the purpose of performing the production-sharing agreement shall be extended, in compliance with the procedure stipulated by this Law, simultaneously with the signing of the extension agreement.
3. The production-sharing agreement may be terminated early only in accordance with the procedure and conditions stipulated by this Law and the production-sharing agreement.
4. The extension or early termination of the production-sharing agreement shall be subject to State registration in compliance with the procedure stipulated for the registration of the agreement.

### **Article 15. State Registration of a Production-Sharing Agreement**

The State registration of a concluded production-sharing agreement shall be carried out by the Inter-Departmental Commission in compliance with the procedure stipulated by the Cabinet of Ministers of Ukraine. The fee for State registration of the agreement shall not be collected.

## **Section III. Implementation of Production-Sharing Agreements**

### **Article 16. Performance of the Works Stipulated by Production-Sharing Agreements**

1. The works stipulated by a production-sharing agreement shall be performed pursuant to the programs, plans and estimated costs approved in compliance with the procedure stipulated by the agreement.

2. Upon the completion of individual stages of prospecting and exploration works, the investor shall return the subsoil areas that were transferred to the it for use pursuant to the terms and conditions of the production-sharing agreement.

3. The industrial development of the mineral deposits, in particular technogenic deposits, or areas thereof, explored under a production-sharing agreement, shall be carried out pursuant to the conditions stipulated by this agreement.

### **Article 17. Peculiarities of Subsoil Use During Implementation of a Production-Sharing Agreement**

1. Peculiarities of subsoil use during implementation of a production-sharing agreement, primarily those associated with the provision, transfer and termination (suspension or restriction) of the right to use the subsoil, as well as legal formalization of such relations, shall be stipulated by this Law and the production-sharing agreement.

2. The right to use the subsoil during the implementation of a production-sharing agreement can be restricted, temporarily prohibited (suspended) or terminated by the Cabinet of Ministers of Ukraine in case of a direct hazard to human life and health or the environment, in compliance with the procedure stipulated by such agreement.

The rights to use the subsoil shall be fully renewed as of the moment of elimination by the investor of the conditions that resulted in the restriction of such rights.

3. Mining facilities related to subsoil use under a production-sharing agreement shall be conserved or liquidated at the investor's cost in compliance with the procedure stipulated by such agreement.

## **Article 18. Equipment, Supplies, Machinery and Other Property Required for the Purposes of a Production-Sharing Agreement**

1. Licensing and quotas shall not be applied to the investor and all of its contractors during import into Ukraine of the equipment, supplies, machinery and other property owned or leased by them and required for performance of the works stipulated by a production-sharing agreement.

2. The equipment, supplies, machinery and other property and material values imported for the implementation of the agreement, except the property and material values the value of which was reimbursed to the investor by the cost-recovery production and which was transferred into the ownership of the State, can be exported from Ukraine on the conditions stipulated by part one of this Article.

## **Article 19. Sharing of the Produced Production**

1. The production produced pursuant to a production-sharing agreement shall be shared between the Parties to the agreement: the State and the investor(s), pursuant to the agreement conditions, which shall stipulate the conditions and procedure for:

- determining the total amount of the produced (extracted) production and the value thereof;
- determining the portion of the cost-recovery production subject to the requirements stipulated by this Article;
- sharing the profit production between the State and the investor;
- transferring to the State the portion of the produced production owned by the State pursuant to the conditions of the agreement, or a monetary equivalent thereof.

2. Produced production shall be shared quarterly (hereinafter -- "settlement period"), unless otherwise stipulated by the production-sharing agreement, and the appropriate quarter adjustments with consideration of the extraction output (more or less than the established rate) shall be carried out to the next settlement period.

3. The quarterly portion of the cost-recovery production shall not exceed 70 per cent of the total amount of the production produced during the settlement period until full reimbursement of the investor's costs.

4. Neither Party to the production-sharing agreement shall have the right to dispose of the produced production prior to the sharing thereof under the agreement without the written consent of the other Parties to the agreement.

5. The procedure for determining the composition of the costs to be reimbursed to the investor with the cost-recovery production shall be set forth in the production-sharing agreement and shall meet the following requirements:

only the investors' costs associated with performance of the works stipulated by the agreement, incurred after entry into force of the agreement, shall be subject to reimbursement;

the composition of the costs to be reimbursed by the cost-recovery production may differ from the composition of the costs stipulated by the legislation and included in the total costs of production and turnover;

costs shall be reimbursed not later than the first settlement period, unless otherwise stipulated by the agreement;

costs shall be reimbursed by transferring to the investor the title to the cost-recovery production at the point of measurement;

long-term (more than 10 years) agreements shall stipulate relevant indexation of the costs that must be reimbursed by cost-recovery production but have not been reimbursed.

#### **Article 20. Title of the Parties to the Production-Sharing Agreement to the Produced Production**

1. Until the time of production sharing at the point of measurement, the title to all production produced under the agreement shall be vested with the State.

2. As of the time of production sharing at the point of measurement, the investor shall acquire the title to the cost-recovery production and a portion of the profit production stipulated in the agreement; the rest of the produced production shall remain under the ownership of the State.

#### **Article 21. The Use of the State-Owned Portion of Produced Production Pursuant to a Production-sharing agreement**

The portion of the produced production remaining in the ownership of the State shall be used (realized) in compliance with the procedure stipulated by the Cabinet of Ministers of Ukraine. The needs of the territory, in which the subsoil area transferred for use under the agreement conditions is located, shall be taken into consideration. Calculation and substantiation of local needs for the produced production shall be carried out by the body of local self-government. Such calculation shall envisage the appropriate reimbursement of the losses resulting from violation of environmental requirements during the use of natural resources in the territory in question.

## **Article 22. Disposal of the Investor's Portion of Produced Production**

1. The investor shall have the right to freely dispose of the portion of the produced production the title to which has been acquired by the investor pursuant to the terms and conditions of the agreement, including: to sell in Ukraine, export, exchange, transfer free of charge and perform any other operations with such production. Such production shall not be subject to licensing or quotas during export, or similar restrictions during its sale in the territory of Ukraine.

The investor shall sell the production owned by it pursuant to the conditions of a production-sharing agreement exclusively within the territory of Ukraine to the State or other business entities, if such requirement arises out of the conditions of a tender and a concluded agreement and if the selling price is not lower than the international market prices of such production. In this case, the production shall be sold provided that there are guarantees of payment for the production, unless otherwise stipulated by a purchase-sale contract.

2. Any restrictions of the investor's rights stipulated by part one of this Article shall be allowed only if they are stipulated by the agreement and arise out of the conditions of a tender for conclusion of a production-sharing agreement.

## **Article 23. Title to the Property Created or Acquired by the Investor for the Implementation of a Production-Sharing Agreement**

1. The property created or acquired by the investor for implementation of a production-sharing agreement shall be owned by the investors.

The title to such property shall be transferred from the investor to the State as of the date when the value of said property has been completely reimbursed by the cost-recovery production, or as of the day of termination of the production-sharing agreement pursuant to the conditions and in compliance with the procedure stipulated in the agreement.

2. Upon transfer to the State of the title to the property created or acquired by the investor for implementation of a production-sharing agreement, the investor shall have, within the term of the agreement, the preemptive right to use such property to perform the works stipulated in the agreement.

## **Article 24. Information Received as a Result of Implementation of a Production-Sharing Agreement**

1. Geological, geophysical, geochemical, technical, economic and other information, as well as samples of rocks (including cores) and other data (hereinafter -- "information") received by the investor as a result of performing the works stipulated in the production-sharing agreement, shall be the property of the State. Provided that the confidentiality conditions stipulated by the agreement are observed, the investor shall have the right to freely use said information free of charge to perform the works stipulated by the agreement.

The investor shall provide the State with such information in compliance with the procedure established by the agreement.

The disposal of said information (in particular, its State expert evaluation, registration and recording) shall be carried out pursuant to the requirements of the legislation and the conditions of the production-sharing agreement.

2. The Parties to the agreement shall be liable for disclosure of confidential information received in the course of implementation of a production-sharing agreement pursuant to the requirements set forth in the agreement and the legislation of Ukraine.

### **Article 25. Taxes, Fees and Insurance Contributions Payable During the Implementation of a Production-Sharing Agreement**

1. Within the term of a production-sharing agreement and within the scope of the activity associated with implementation of the agreement, collection from the investor of the general national and local taxes and fees (mandatory payments) stipulated by the legislation, except for those stipulated by part three of this Article, shall be replaced with sharing of the produced production between the State and the investor on the conditions set forth in the agreement.

2. The Parties to the agreement shall determine the portion of the profit production that should remain in the ownership of the State after the sharing of the produced production subject to the requirements set forth in part one of this Article.

3. While implementing a production-sharing agreement the investor shall pay:

value-added tax;

enterprise profit tax;

a fee for geological exploration works accomplished at the expense of the State budget specified in the production-sharing agreement;

contributions for universally mandatory State social insurance for the Ukrainian employees and the foreigners employed in Ukraine;

a fee for mandatory State pension insurance for the Ukrainian employees and foreign citizens employed in Ukraine;

payments for subsoil use specified in the production-sharing agreement.

4. Enterprise profit tax shall be paid by the investor in the amounts stipulated by the law, subject to the following peculiarities:

tax on the profit obtained as a result of performing a production-sharing agreement can be paid in monetary form or, if stipulated in the agreement, in kind, i.e. as a portion of the profit production acquired by the investor into ownership as a result of sharing of the produced production;

the base for taxation of the profit obtained from implementation of a production-sharing agreement shall be the investor's profit calculated from the profit production transferred to the investor for ownership in accordance with the agreement;

while determining the taxation base, the profit production or its value (depending upon the form of the tax payment) shall be reduced accordingly by the portion of the production or the value thereof, which is equal to the sum of the mandatory payments stipulated by part three of this Article (except for profit tax), or by the sum of these payments, as well as by other production and turnover costs that are included in total costs but are not reimbursed to the investor by the cost-recovery production (in kind or in monetary form). The composition and procedure for registering the costs that are included in the total costs of production and turnover shall be governed by the law effective as of the date of signing of the agreement;

if the investor's object of taxation according to the results of the reported period has a negative value (taking into account depreciation deductions), it shall be allowed to correspondingly reduce the object of taxation of the next period, as well as of each subsequent period, without limiting the term for carrying over to subsequent periods for taxation purposes, until such negative value of the object of taxation is repaid completely;

proceeding from the peculiarities of a production-sharing agreement and the assets (equipment, facilities, etc.) involved in the implementation thereof, the production-sharing agreement can stipulate depreciation rates (including depreciation of the expenses related to extraction of mineral resources) different from those stipulated by the effective law on taxation of profits of enterprises. In this case, the depreciation rates stipulated by the agreement shall be applied for taxation purposes;

tax on the profit obtained from other types of activity not associated with implementation of a production-sharing agreement shall be paid by the investor in compliance with the laws effective at the time of obtaining of such profit, separately from the tax on the profit received in the form of the profit production;

enterprise profit tax privileges, stipulated by the law, shall not be applied during taxation of the profit received by the investor during performance of a production-sharing agreement, unless otherwise stipulated by the agreement;

tax shall not be levied on foreign investor's incomes from Ukrainian sources of origin received as a result of activities under a production sharing agreement, in particular if such incomes are paid to the investor by its representative office through which the investor operates while implementing the provisions of the production sharing agreement.

5. The procedure, terms and recording of payment by the investor of the tax on the profit received as a result of implementation of production-sharing agreements shall be determined by the Cabinet of Ministers of Ukraine within the scope of its authority. The official confirmation of paid profit tax shall be issued to the investor upon its request not later than 10 calendar days from the date of receipt of such request. The tax body issuing such confirmations shall be determined by the Cabinet of Ministers of Ukraine not later than one month from the date of signing of the relevant production-sharing agreement.

The peculiarities of the procedure, terms and recording of tax payment under a multilateral production-sharing agreement, or in the case when the investor is an association of legal entities, shall be determined by the Cabinet of Ministers of Ukraine subject to the requirements set forth in this Law.

Value-added tax liabilities shall not arise and tax credit amounts shall not change when profit production is being shared between the investor and the State, as well as when the investor transfers the portion of produced production it owns pursuant to the production sharing agreement to cover tax liabilities with respect to taxes and charges, as well as when the investor transfers to the State the title to the property that was acquired or created by the investor for the purposes of performing the agreement and the value of which has been reimbursed with cost-recovery production, or as of the day on which the agreement is terminated, as well as when production is transferred between investors under a multilateral agreement and during a transfer of property by the parties to a production sharing agreement to the agreement operator to be used within the scope of the agreement, as well as during the sharing of cost-recovery and/or profit production between the investors

6. Sale in the customs territory of Ukraine of the production acquired by the investor into ownership as a result of sharing thereof under a production-sharing agreement shall be subject to value-added tax, which shall be paid in compliance with the general procedure stipulated by the legislation effective at the date of conclusion of the agreement.

The value-added tax payable by the investor to the budget during sale of products in the customs territory of Ukraine, if stipulated in the production-sharing agreement, can be paid in kind at the expense of the production transferred to the investor for ownership in amounts equivalent to the tax amount. In such case, the procedure for paying and placing value-added tax to the budget shall be determined by the Cabinet of Ministers of Ukraine.

7. Importation (import) duty (except for customs duty) and value-added tax shall not be collected when the goods (works, services) and other material valuables intended for the performance of a production sharing agreement are imported into the customs territory of Ukraine.

The hydrocarbon raw materials (oil and gas) produced in the exclusive (maritime) economic zone of Ukraine shall be imported into the customs territory of Ukraine without paying importation (import) duty, customs fees and without paying taxes (including value-added tax).

Subject to the requirements set forth in Article 22 of this Law, in case of export from the customs territory of Ukraine of the production acquired by the investor for ownership pursuant to the provisions of the agreement, customs charges (except for customs fee), excise duty and other taxes and mandatory fees shall not be collected, except for value-added tax which shall be collected at the zero rate.

Said provisions shall also apply, within the scope of the activities related to a production sharing agreement, to the legal entities (contractors, subcontractors, suppliers, carriers and other contracting parties) involved in the works stipulated by the production sharing agreement on the basis of agreements (contracts) with the investor.

If said goods (works, services) and other material valuables are used for purposes other than the prescribed purposes, the investor (contractors, subcontractors, suppliers, carriers and other contracting parties) shall pay the taxes and fees that were not paid because of granted exemptions, if the default occurs because of the fault of the investor (contractors, subcontractors, suppliers, carriers and other contracting parties).

If said goods (works, services) and other material valuables, which were previously acquired by the investor in the customs territory of Ukraine, are used (exported) outside the customs territory of Ukraine, customs charges, excise duty and other taxes and mandatory fees shall not be collected, except for value-added tax which shall be collected at the zero rate.

8. The payment procedure, amounts of payments for subsoil use and the fee for the geological exploration works performed at the expense of the State budget, as well as the conditions for making such payments and paying such fees during performance of production-sharing agreements, shall be stipulated by such agreements.

9. This Article, except for the requirements set forth in part seven of this Article, shall not be applied to the contractors and subcontractors, suppliers, carriers and other contracting parties (including foreign ones) participating in the works (services) stipulated in a production-sharing agreement on the basis of agreements (contracts) with the investor.

Said entities shall pay taxes and fees (mandatory payments) pursuant to the procedure stipulated by the legislation.

10. Accounting records of the investor's financial and business activity related to performance of the works (services) stipulated in the production-sharing agreement shall be kept separately from the accounts of other types of activity. The procedure for keeping such records, in particular for the purpose of reimbursing the investor's costs and calculating the profit tax, shall be set forth in the production-sharing agreement pursuant to the requirements of Ukrainian law.

If works under a production-sharing agreement are carried out at several subsoil areas, the investor shall keep consolidated accounts of its business activity.

11. The investor's annual balance sheet and reports on the activities related to the performance of a production-sharing agreement shall be subject to mandatory annual audit.

## **Article 26. Assignment of Rights and Obligations Stipulated by a Production-Sharing Agreement**

1. The investor shall have the right to assign all or part of its rights and obligations stipulated in the production-sharing agreement to any legal entity or natural person only upon consent of the State, and provided that such entity or person has sufficient financial and technical resources and experience in organizing operations necessary for performance of the works stipulated in the agreement. The State shall not deny such consent without substantial reason. If the Cabinet of Ministers of Ukraine upon the approval of the body of local self-government does not reply to the investor's request concerning assignment of its rights and obligations stipulated in the agreement within 90 days of receipt thereof, the consent of the State shall be deemed obtained.

2. The assignment of the rights and obligations under the agreement shall be formalized by a written contract with the entity or person assuming such rights and obligations under the production-sharing agreement. The contract shall become the integral part of the agreement and shall be subject to State registration in compliance with the procedure stipulated by this Law for the State registration of production-sharing agreements, and shall result in the relevant formulation of licenses, permits, etc., within 30 days from the date of signing of such contract.

3. If a Ukrainian investor assigns its rights and obligations to a foreigner or a foreign legal entity in compliance with the procedure stipulated by this Article, the terms and conditions set forth in the production-sharing agreement can be revised upon the foreign investor's request, taking into account the peculiarities for foreign investment stipulated by this Law.

## **Article 27. Guarantees Against Changes in Legislation**

{Part one of Article 27 deleted on the basis of Law N 2562-VI (2562-17) dated 23.09.2010}

2. The investor shall not be subject to the normative and legal acts of the bodies of executive power and local self-government, if such acts limit the investor's rights stipulated in the production-sharing agreement, except for orders of the bodies of State control and supervision issued pursuant to the Ukrainian legislation to create the conditions for safe performance of works, subsoil and environmental protection and preservation of human health. Said orders of the bodies of State control and supervision that result in limitation, temporary prohibition (suspension) or termination of the use of subsoil shall be binding upon the investor as of the date of adoption of the relevant resolution by the Cabinet of Ministers of Ukraine or the body of local self-government, which is a Party to the agreement, in compliance with the procedure stipulated by part two of Article 17 of this Law.

## **Article 28. Control Over Implementation of a Production-Sharing Agreement**

1. State control and supervision of the performance of the works stipulated in a production-sharing agreement shall be carried out by the bodies of executive power within the scope of their authority and in compliance with the procedure stipulated by the legislation of Ukraine.

The Cabinet of Ministers of Ukraine shall control implementation of a production-sharing agreement by the State.

State control over the implementation of a production-sharing agreement shall be carried out by the Cabinet of Ministers of Ukraine or, upon its assignment, by the Inter-Departmental Commission or the appropriate body (bodies) of central executive power in compliance with the procedure and conditions stipulated by the production-sharing agreement and this Law.

At least once every five years the Cabinet of Ministers of Ukraine, with the participation of the Inter-Departmental Commission, shall organize and perform a complex audit of the observance of the conditions stipulated by a production-sharing agreement. If substantial violations by the investor of the agreement conditions are revealed, the Cabinet of Ministers of Ukraine shall have the right to cancel the agreement, and the losses shall be reimbursed in compliance with the procedure stipulated by Article 31 of this Law.

2. Authorized representatives of the bodies, exercising control over implementation of a production-sharing agreement, shall have the right of unrestricted access to the sites of the works stipulated in the agreement, as well as the documents related to performance of such works, exclusively for the purpose of exercising control over the implementation of the agreement.

3. Adoption of restrictive decisions by the bodies of State control and supervision shall be allowed only in the events and in compliance with the procedure stipulated by part two of Article 17 and part two of Article 27 of this Law.

4. If contracting, sub-contracting and other organizations (persons) are involved in performance of the works stipulated in a production-sharing agreement, the investor shall supervise the performance of the works to ensure compliance with the requirements of the agreement and the work performance documents approved in compliance with the established procedure.

## **Article 29. Liability of the Parties to a Production-sharing agreement**

1. The Parties shall incur the liability stipulated by a production-sharing agreement for the failure to perform or improper performance of their obligations set forth in the agreement, subject to the provisions of this Article.

2. Environmental damage resulting from the investor's activity associated with implementation of a production-sharing agreement shall be indemnified (compensated) in full by the investor, irrespective of payments for environmental pollution or deterioration of

natural resources. The investor shall be released from the indemnification of environmental damage only if the investor proves that the damage resulted from natural calamities or intentional actions of the affected persons or entities.

3. The damage resulting from the investor's legitimate actions that are in full compliance with the requirements of the production-sharing agreement, and were approved by the Inter-Departmental Commission, shall be indemnified by the Parties to the agreement in the proportions stipulated for production-sharing purposes.

### **Article 30. Ensuring Performance of the Investor's Obligations and Liability**

1. Performance of the investor's obligations stipulated in the production-sharing agreement shall be ensured pursuant to the conditions determined by the Parties in compliance with Ukrainian law.

2. The investor's civil liability, including liability for damage to the environment and human health, shall be subject to insurance, unless otherwise stipulated by the agreement. Upon agreement between the Parties, an environmental risk insurance program shall be adopted within the framework of the agreement.

### **Article 31. Dispute Resolution**

Disputes between the Parties to a production-sharing agreement, associated with performance, termination and invalidation of the agreement, shall be settled in the courts of Ukraine, unless otherwise stipulated by the conditions of the production-sharing agreement.

(The provision of Article 32 was nullified because of being unconstitutional to the extent that it established mandatory waiver by the State of judicial immunity, immunity in respect of the preliminary injunction, and enforcement of court awards in the production-sharing agreements made with the participation of foreign investors, on the basis of Decision No. 17-rp/2001 of the Constitutional Court dated 06.12.2001)

### **Article 32. Immunity of the State**

The production-sharing agreements made with the participation of foreign investors shall stipulate waiver by the State of judicial immunity, immunity in respect of the preliminary injunction, and enforcement of court awards.

## **Section IV. Currency Regulation During Implementation of Production-Sharing Agreements**

### **Article 33. Bank Accounts**

1. For the purpose of servicing the works stipulated in the production-sharing agreement, the investor (contractor, subcontractor, supplier, carrier and other contracting parties) shall have the right to open national and (or) foreign currency bank accounts in Ukrainian banks in compliance with the procedure established by the legislation of Ukraine; these accounts shall be used exclusively for servicing the activity (works, services) stipulated by the agreement.

2. Collection of funds from the bank accounts opened by the investor in the territory of Ukraine for the purpose of servicing the works stipulated by a production-sharing agreement may not be performed in a non-disputable manner.

### **Article 34. Currency Regulation**

1. The money received by the foreign investor pursuant to a production-sharing agreement can be converted freely (without any restrictions) into the Ukrainian or foreign convertible currency, as well as transferred outside Ukraine in compliance with the conditions set forth in such agreement.

2. If foreign currency proceeds are subject to mandatory sale on the currency market of Ukraine in accordance with Ukrainian legislation, this requirement shall not be applied to the foreign currency proceeds received by the investors that are parties to a production-sharing agreement as a result of sale of the portions of the produced production that are in their ownership.

## **Section V. Peculiarities of Regulating Labor Relations During Implementation of a Production-Sharing Agreement**

### **Article 35. Employment Agreement**

1. Investors (including foreign investors) shall employ (hire) employees in the territory of Ukraine for the purposes of a production-sharing agreement by concluding employment agreements (contracts), the form and contents of which shall comply with the Ukrainian labor legislation.

(Part two of Article 35 was suspended until 1 January 2011 pursuant to Law of Ukraine N 799-VI dated 25.12.2008)

2. Employment in Ukraine of foreigners hired by the investor within the scope and for the positions (specialties) stipulated by a production-sharing agreement shall be carried out without obtaining employment permits.

### **Article 36. International Agreements of Ukraine**

If rules other than those stipulated by this Law are established pursuant to an international treaty, a consent to ratification of which was given by the Verkhovna Rada of Ukraine, the rules of the international treaty shall prevail.

### **Section VI. Final Provisions**

1. This Law shall take effect as of the date of its publication.

2. The Cabinet of Ministers of Ukraine within one month shall:

submit for consideration by the Verkhovna Rada of Ukraine the proposals on harmonizing the laws of Ukraine with the Law of Ukraine "On Production-Sharing Agreements";

ensure, within the scope of its powers, the adoption of the regulations stipulated by this Law;

harmonize its regulations with this Law;

ensure revision and cancellation by the ministries and other central bodies of executive power of Ukraine of their regulations that are contrary to this Law.

**President of Ukraine**

**L. KUCHMA**

**Kiev**

**14 September 1999**

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