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SUBSOIL USE CONTRACTS FOR “COMPLEX” PROJECTS

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On 24 November 2022 Senate of the RoK Parliament has approved draft amendments to the Code of the Republic of Kazakhstan “On Subsoil and Subsoil Use”.

Amendments, inter alia, provide for the possibility to conclude two new types of subsoil use contracts for hydrocarbons (“HC”):

- contract for exploration and production of HC for a “complex project”;
- contract for production of HC for a “complex project”.

What is a “complex project”?

“Complex” projects will be:

- offshore projects on exploration/production of HC within the Kazakhstani sector of the Caspian or Aral Sea.
- onshore projects on exploration/production of gas with an oil-saturated part of $\leq 25\%$ of the total HC volume.
- onshore projects on exploration/production of HC meeting any of the following criteria:
 - 1) containing “unconventional” HC (starting from August 2022, they include shale oil and gas, native bitumen, coalbed methane and other);
 - 2) depth of the highest point of a deposit is ≥ 4500 meters;
 - 3) hydrogen sulfide in the reservoir fluid is not less than 3.5%;
 - 4) abnormally high reservoir pressure;
 - 5) location under salt deposits with a thickness of more than 100 meters;
 - 6) a discovered deposit belongs to non-structural traps.

Territories for HC development as complex projects (“Complex Territories”) will be listed in the State Subsoil Fund Management Program.

Contents and special features of contracts for Complex projects

Contracts for “Complex” projects (“Complex” Contracts”) will be model and may have English version for projects with foreign participation.

The validity period of “Complex” Contract may consist of exploration and production periods.

Exploration period will be 18 years, including:

- initial exploration stage – nine (9) years;
- appraisal stage – six (6) years;
- test production stage – three (3) years.

Production period will be 25 years (or 45 years for large deposits).

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The benefits under “Complex” Contract will include:

1. “Extended” guarantees of legislation stability

Generally, guarantees of legislation stability do not apply to changes in customs regulations. However, for complex projects, these guarantees will apply to such changes. In particular, such guarantees will apply to exemption from export customs duties for crude oil produced under “Complex” projects.

2. Opportunity to resolve disputes under complex projects in arbitration in Kazakhstan or abroad
Disputes arising from “Complex” projects, at the choice of a subsoil user, will be resolved in the courts of the Republic of Kazakhstan or in arbitration in accordance with the UNCITRAL arbitration rules on the territory of the Republic of Kazakhstan, including the Astana International Financial Center, or abroad.

3. Special tax and customs conditions

“Complex” Contract will include a number of conditions on taxation and exemption from payment of export customs duties. These conditions involve changes to the tax and customs regime set forth by the legislation (for example, exemption from property tax, expanded opportunities with respect to depreciation, and etc.)

Procedure for obtaining “Complex” Contract

To get “Complex” Contract and use the above benefits it will be required either

- (1) to conclude a new contract for a subsoil plot in “Complex” Territory, or
- (2) to transform (by signing a supplement) an existing contract into “Complex” (provided that subsoil plot meets the criteria of a “Complex” project).

An auction under the general procedure will be held to conclude new contracts for “Complex” projects. The minimum number of Kazakhstani personnel will be an additional condition for participation in an auction.

After conclusion of a new contract, a subsoil user should confirm the status of a “Complex” project by (1) a report on current estimation of geological reserves or (2) a report on estimation of geological reserves (approved by state subsoil examination). If, as a result, the project status will not be confirmed, then the provisions of a contract will be aligned with the usual contract on production of HC upon shifting to production period.