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## **LAW OF UKRAINE**

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

*[On Ruling Certain Provisions Constitutional – See Decision of the Constitutional Court N 17-rp/2001 dated 6 December 2001]*

*[On Ruling Certain Provisions Unconstitutional – See Decision of the Constitutional Court N 17-rp/2001 dated 6 December 2001]*

*As amended by the Laws of Ukraine as follows:*

*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  
N 2756-VI dated 2 December 2010,  
N 3553-VI dated 17 June 2011  
N 3959-VI dated 21 October 2011  
N 4053-VI dated 17 November 2011  
N 5406-VI dated 2 October 2012  
N 5463-VI dated 16 October 2012  
N 331 -VII dated 18 June 2013  
N1170-VII dated 27 March 2014  
N 71-VIII dated 28 December 2014*

*(In the text of the Law, the words "Interagency Commission" in all cases have been replaced with the words "central executive authority that implements the State's policy in the area of geological exploration and rational use of subsoil" in the respective case pursuant to Law of Ukraine N 5463-VI dated 16 October 2012)*

*(In the text of the Law, to replace the words "the central executive authority that ensures the development of the State's policy in the area of natural environment protection" and "the central executive authority that implements the State's policy in the area of geological exploration and rational use of subsoil", in all cases, with the words "Interagency Commission", as relevant, pursuant to Law of Ukraine N 331 -VII dated 18 June 2013)*

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:

"investor" - a citizen of Ukraine, a foreigner, a stateless person, a legal entity of Ukraine or another state, an association of legal entities created in or outside Ukraine, that has the relevant financial, economic and technical capabilities or relevant qualification to be able to use subsoil and identified as a tender winner; the person identified in paragraph fifteen in part one of Article 7 of this Law, if an agreement is entered into with the participation of this person; a person that assumed the rights and responsibilities stipulated by a production sharing agreement as a result of the assignment of rights and responsibilities pursuant to Article 26 of this Law;

*(in Article 1, a new paragraph was added pursuant to the Law of Ukraine N 4053-VI dated 17 November 2011; as restated by the Law of Ukraine N 5406-VI dated 2 October 2012)*

"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 and, in the events stipulated by this Law, taking into account indexation thereof;

*(paragraph five of Article 1 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

"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;

nonconventional hydrocarbons - shale bed gas, coal bed gas (methane), central basin gas, oil, condensed or another hydrocarbon raw material in nonconventional collectors.

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*(in Article 1, paragraph ten was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

## **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, transportation, treatment, storage, processing, use, sale or other disposal thereof, as well as construction and operation of related industrial facilities, pipelines and other facilities shall be governed by a production-sharing agreement, which shall be concluded pursuant to this Law.

*(part two of Article 2 as amended by the Laws of Ukraine N 2562-VI dated 23 September 2010, N 5406-VI dated 2 October 2012)*

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 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.

*(part four of Article 2 as amended by the Laws of Ukraine N 2562-VI dated 23 September 2010, N 5406-VI dated 2 October 2012)*

## **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, subject to the provisions of this Law.

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*(part two of Article 3 as amended by the Law of Ukraine N 331 -VII dated 18 June 2013)*

#### **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, (including agreement operators), as well as foreign investors' representative offices, and shall assist with the issuance to their contracted, subcontracted and other organizations (persons), as well as representative offices of foreign contracted, subcontracted and other organizations (persons) 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.

*(paragraph one of part three of Article 4 as amended by the Law of Ukraine N 3370-IV dated 19 January 2006; as restated by the Law of Ukraine N 2562-VI dated 23 September 2010; as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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 interagency commission (hereinafter -- "the Interagency Commission") shall be established by the Cabinet of Ministers of Ukraine and shall consist of representatives of public authorities, local self-government authorities and the People's Deputies of Ukraine, and shall be authorized to address the matters of organizing the conclusion and performance of production-sharing agreements.

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Information, organization, material and other support of the operation of the Interagency Commission shall be provided by a central body of executive power (hereinafter - the working body of the Interagency Commission) to be identified by the Cabinet of Ministers of Ukraine.

The Regulations for the Interagency Commission shall be approved by the Cabinet of Ministers of Ukraine.

*(part one of Article 5 as amended by the Laws of Ukraine N 2562-VI dated 23 September 2010, N 5406-VI dated 02 October 2012, N 5463-VI dated 16 October 2012; as restated by the Law of Ukraine N 331 -VII dated 18 June 2013)*

*(Part two of Article 5 was deleted pursuant to the Law of Ukraine N 4053-VI dated 17 November 2011)*

2. Under a production-sharing agreement, the resolution of the matters of management and coordination of the parties' activities can be laid upon a management committee or another management body created with the participation of the parties.

For the purposes of the State's participation in the performance of a concluded production-sharing agreement (including participation in the operation of the created management bodies) the Cabinet of Ministers of Ukraine may assign the required powers to the central body of executive power.

*(the new part two was added to Article 5 pursuant to the Law of Ukraine N 331 -VII dated 18 June 2013)*

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.

*(paragraph one of part one of Article 6 as amended by the Law of Ukraine N 3959-VI dated 21 October 2011)*

At the investor's request and when the land plots required for the performance of a concluded production-sharing agreement are owned by the State or are municipal property, the subsoil areas (mineral deposits) shall be granted together with the land plots. In all other events,

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the State shall ensure the granting, at the investor's request, of the land plots required for the performance of the concluded production-sharing agreement in compliance with the procedure stipulated by the agreement. 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, unless the production-sharing agreement stipulates otherwise.

*(in part one of Article 6, paragraph two was added pursuant to the Law of Ukraine N 2562-VI dated 23 September 2010; as restated by the Law of Ukraine N 5406-VI dated 2 October 2012)*

2. (Paragraph one of part two of Article 6 has been deleted pursuant to the Law of Ukraine N 3959-VI dated 21 October 2011)

An investor may file with the Cabinet of Ministers of Ukraine or the Interagency Commission a proposal concerning the holding of a tender for the conclusion of a production-sharing agreement with respect to a subsoil area. The investor shall be notified of the outcomes of the consideration of a filed proposal within three months.

*(paragraph two of part two of Article 6 as amended by the Laws of Ukraine N 3959-VI dated 21 October 2011, N 5463-VI dated 16 October 2012)*

The tender for the conclusion of the production-sharing agreement with respect to a subsoil area shall be held if any of the following criteria is met:

*(paragraph three of part two of Article 6 as restated by the Law of Ukraine N 3959-VI dated 21 October 2011)*

- 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;

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- 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 change geographic coordinates of the subsoil areas (mineral deposits) with respect to which a tender for the conclusion of a production-sharing agreement was announced or negotiations are being held by the Interagency Commission concerning the conclusion of the agreement.

The prohibition shall not apply to changes of geographic coordinates of the subsoil areas (mineral deposits) with respect to which a production-sharing agreement has been entered into, which changes are made at the investor's (investors') request in compliance with the procedure stipulated by the production-sharing agreement through relevant amendments to the special subsoil use permit without the need for the relevant changes to the agreement.

*(part three of Article 6 as restated by the Laws of Ukraine N 3959-VI dated 21 October 2011, N 5406-VI dated 2 October 2012; as amended by the Law of Ukraine N 5463-VI dated 16 October 2012)*

4. A production-sharing agreement shall be concluded with the winner of a tender, subject to the tender conditions and the winner's bid, and in the events stipulated in paragraph fifteen in part one of Article 7 of this Law - with the winner of the tender and the person identified in paragraph fifteen in part one of Article 7 of this Law.

*(paragraph one of part four of Article 6 as restated by the Law of Ukraine N 4053-VI dated 17 November 2011)*

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

*(paragraph two of part four of Article 6 as amended by the Laws of Ukraine N 2562-VI dated 23 September 2010, N 4053-VI dated 17 November 2011)*

*(part four of Article 6 as amended by the Law of Ukraine N 3553-VI dated 17 June 2011)*

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 holding a tender in relation to subsoil areas with low mineral deposits as certified by conclusions of the relevant government bodies.

If a subsoil user that holds a special subsoil use permit and has started the activities in accordance with the terms and conditions stipulated therein expressed a wish to conclude a production sharing agreement, this agreement (bilateral or multilateral), on the basis of a decision of the Cabinet of Ministers of Ukraine, can also be concluded without holding a tender.

*(paragraph two of part five of Article 6 as restated by the Law of Ukraine N 2562-VI dated 23 September 2010; as amended by the Law of Ukraine N 4053-VI dated 17 November 2011)*

A production-sharing agreement can also be entered into as described on the basis of several special permits and/or with respect to several subsoil areas, regardless of whether the subsoil areas are adjacent or located separately.

*(in part five of Article 6, paragraph three was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

A decision of the Cabinet of Ministers of Ukraine concerning the conclusion of an agreement without holding a tender shall be approved on the basis of:

*(in part five of Article 6, paragraph four was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

the subsoil user's written request (application) to be submitted to the Interagency Commission with the proposal to enter into a (bilateral or multilateral) production-sharing agreement with copies of the documents certifying the applicant's legal status and financial potential, a copy of the special subsoil use permit(s) and other information and materials as may be requested by the Interagency Commission;

*(in part five of Article 6, paragraph five was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*



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proposals of the Interagency Commission as to whether the production-sharing agreement can be entered into.

*(in part five of Article 6, paragraph six was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

If the subsoil user's request (application) concerning the conclusion of a multilateral production-sharing agreement is submitted, the request (application) shall be signed by all applicants, and shall contain information about each of them.

*(in part five of Article 6, paragraph seven was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

The Cabinet of Ministers of Ukraine shall consider the subsoil user's request and approve a respective decision within three months after the day on which it was submitted and registered by the working body of the Interagency Commission.

*(in part five of Article 6, paragraph eight was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

The production-sharing agreement shall be entered into with a subsoil user subject to the provisions of this Law no later than 12 months after the day on which the relevant decision of the Cabinet of Ministers of Ukraine was approved.

*(in part five of Article 6, paragraph nine was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

Upon conclusion of the production-sharing agreement, the special subsoil use permit shall be re-issued in accordance with the provisions of this Law in compliance with the procedure stipulated by the agreement. When a multilateral production-sharing agreement is concluded, the new special subsoil use permit shall be executed in the names of all investors - parties to the agreement. If the agreement is made with respect to several subsoil areas, a single special permit shall be executed in the names of all investors - parties to the agreement.

*(in part five of Article 6, paragraph ten was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

During the time when the application is being considered by the Interagency Commission and negotiations are held concerning the approval of the provisions of a production-sharing agreement, the subsoil user shall not lose the right to carry out the works stipulated by the special permit at the respective subsoil area.

*(in part five of Article 6, paragraph eleven was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

## **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 upon the submission of the Interagency Commission, and shall indicate the following:

*(paragraph one of part one of Article 7 as restated by the Law of Ukraine N 331 -VII dated 18 June 2013)*

- 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;

*(paragraph three of part one of Article 7 as restated by the Law of Ukraine N 2562-VI dated 23 September 2010)*

- 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 documents and the procedure for providing bidders with the documents.

*(paragraph thirteen of part one of Article 7 as amended by the Law of Ukraine N 5463-VI dated 16 October 2012; as restated by the Law of Ukraine N 331 -VII dated 18 June 2013)*

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In certain cases, tender conditions may stipulate the requirements:

*(paragraph fourteen of part one of Article 7 as restated by the Law of Ukraine N 4053-VI dated 17 November 2011)*

concerning the conclusion of a production-sharing agreement with the tender winner and a business company identified in accordance with the tender conditions in which the State owns 100 per cent of the authorized capital, or a business company created with its participation, stating the company's interest in the production-sharing agreement;

*(the paragraph of part one of Article 7 as restated by the Law of Ukraine N 4053-VI dated 17 November 2011)*

concerning sale exclusively in the territory of Ukraine of the production produced and acquired by the investor into ownership.

*(the paragraph of part one of Article 7 as restated by the Law of Ukraine N 4053-VI dated 17 November 2011)*

*(the paragraph of part one of Article 7 has been deleted by the Law of Ukraine N 3553-VI dated 17 June 2011)*

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 the participants;

*(paragraph four of part two of Article 7 as amended by the Law of Ukraine N 4053-VI dated 17 November 2011)*

- 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 Interagency Commission shall publish tender announcements in the official publications of Ukraine, and perform other functions relating to tender organization within the scope of its powers, as established by the Cabinet of Ministers of Ukraine.

*(part three of Article 7 as amended by the Laws of Ukraine N 5463-VI dated 16 October 2012, N 331 -VII dated 18 June 2013)*

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

*(part four of Article 7 as amended by the Law of Ukraine N 3553-VI dated 17 June 2011)*

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

*(part five of Article 7 as amended by the Law of Ukraine N 4053-VI dated 17 November 2011)*

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. Tender application shall meet the tender conditions, and shall contain:

*(paragraph one of part seven of Article 7 as amended by the Law of Ukraine N 4053-VI dated 17 November 2011)*

- information about the participant or participants (full name, citizenship, place of residence, profession - for individuals; 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 was registered, principal activity stipulated by the charter, and charter capital) certified by documents;

*(paragraph two of part seven of Article 7 as amended by the Laws of Ukraine N 2562-VI dated 23 September 2010, N 4053-VI dated 17 November 2011)*

- 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.

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8. The working body of the Interagency Commission shall register all timely submitted applications on the day of their receipt in compliance with the procedure stipulated by the Cabinet of Ministers of Ukraine.

*(part eight of Article 7 as amended by the Laws of Ukraine N 4053-VI dated 17 November 2011, N 5406-VI dated 2 October 2012; as restated by the Laws of Ukraine N 5463-VI dated 16 October 2012, N 331 -VII dated 18 June 2013)*

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

*(paragraph one of part nine of Article 7 as amended by the Law of Ukraine N 5463-VI dated 16 October 2012)*

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

*(paragraph two of part nine of Article 7 as amended by the Laws of Ukraine N 5463-VI dated 16 October 2012, N 331 -VII dated 18 June 2013)*

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 Interagency Commission.

*(paragraph one of part ten of Article 7 as amended by the Law of Ukraine N 5463-VI dated 16 October 2012)*

In determining the winner of the tender, preference shall be given pursuant to the following principal criteria:

*(paragraph two of part ten of Article 7 as amended by the Laws of Ukraine N 2562-VI dated 23 September 2010, N 4053-VI dated 17 November 2011)*

- 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;

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- the participant 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 documents.

*(paragraph seven of part ten of Article 7 as amended by the Law of Ukraine N 4053-VI dated 17 November 2011)*

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 after the day of publication of the tender results, a production-sharing agreement shall be concluded in compliance with the procedure and on the conditions stipulated by this Law, subject to the tender conditions and the winner's bid. This term can be extended by six months at the investor's written request.

*(part twelve of Article 7 as amended by the Laws of Ukraine N 3553-VI dated 17 June 2011, N 4053-VI dated 17 November 2011)*

## **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;

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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;

*(clause 9 of part two of Article 8 as restated by the Laws of Ukraine N 2562-VI dated 23 September 2010, N 5406-VI dated 2 October 2012)*

10) the conditions for using mineral resources;

11) the procedure for determining the value of extracted mineral resources, including the currency in which the value will be stated, in the agreement involving the foreign investor;

*(clause 11 of part two of Article 8 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

12) the procedure for payment of the subsoil use rent for extraction of mineral resources ;

*(clause 12 of part two of Article 8 as amended by the Laws of Ukraine N 5406-VI dated 2 October 2012, N 71-VIII dated 28 December 2014)*

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;

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21) the procedure for transferring the title to the property from the investor to the State;

22) the procedure for supervising the performance of the production-sharing agreement; deadlines, forms and content of the reports, information and accounts to be submitted by the investor to the Cabinet of Ministers of Ukraine or central body of executive power authorized by the Cabinet of Ministers of Ukraine;

*(clause 22 of part two of Article 8 as restated by the Law of Ukraine N 331 -VII dated 18 June 2013)*

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;

*(in part two of Article 8, clause 31 was added pursuant to the Law of Ukraine N 2562-VI dated 23 September 2010)*

32) other essential provisions stipulated by this Law.

*(in part two of Article 8, clause 32 was added pursuant to the Law of Ukraine N 2562-VI dated 23 September 2010)*



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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. Procedure, guidelines, rules for keeping accounting records under a production-sharing agreement, including a currency to be used in the accounting records, as well as a list, substance, form of, procedure for making and submitting financial reports under the production-sharing agreement shall be stipulated in the agreement..

*(part six of Article 8 as restated by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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;

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

*(paragraph five of part one of Article 9 has been deleted pursuant to Law of Ukraine N 2562-VI dated 23 September 2010)*

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;

*(paragraph seven of part one of Article 9 as amended by the Law of Ukraine N 2562-VI dated 23 September 2010)*

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

*(paragraph eight of part one of Article 9 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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;

*(paragraph ten of part one of Article 9 as restated by the Law of Ukraine N 2562-VI dated 23 September 2010)*

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. To this end, investors shall enter into an operation agreement (hereinafter - operation agreement) to regulate the relations between the agreement operator and the other investors. Unless the operation agreement stipulates otherwise, it shall not be a joint activity agreement nor shall it be governed by the rules of the Ukrainian law applicable to joint activity and joint activity agreements.

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*(paragraph two of part two of Article 9 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

If a production-sharing agreement is entered into with the tender winner and the person identified in paragraph fifteen of part one in Article 7 of this Law, the tender winner (one of the winners) shall be predominantly appointed the agreement operator.

*(a new paragraph was added to part two of Article 9 pursuant to the Law of Ukraine N 4053-VI dated 17 November 2011)*

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.

*(part two of Article 9 as restated by the Law of Ukraine N 2562 dated 23 September 2010)*

3. The production-sharing agreement operator shall organize proper performance of the works stipulated by the agreement, and to this end shall, inter alia:

carry out routine operation activities stipulated by the agreement (personally or by involving contracted, subcontracted or other organizations (persons);

distribute cost-recovery and profit production;

accept and use the investors' property necessary for performing the agreement;

calculate and pay taxes and charges (mandatory fees);

maintain separate accounting and tax records of operations under the agreement;

provide for all the agreement parties sufficient access to complete information about all activities conducted under the concluded production-sharing agreement, including any commercially valuable confidential information;

sell (realize) the investors' profit, cost-recovery production, and the State's portion of the production if stipulated so by the provisions of the production-sharing agreement;

implement other responsibilities according to this Law and the provisions of the production-sharing agreement.

A multilateral production-sharing agreement shall authorize the agreement operator to make independent decisions concerning continuous routine activities necessary for the completion of the tasks (plans, programs, etc.) stipulated by the production-sharing agreement.

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*(in Article 9, part three was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

4. If the parties agree so, the multilateral production-sharing agreement may stipulate a procedure for changing the scope of the investors' rights and responsibilities under the production-sharing agreement, including their shares in the production extracted from specific deposits (subsoil areas) within the subsoil area granted for use under the agreement and/or at separate stages or types of works. The procedure and grounds for changing the scope of the investors' rights and responsibilities under the production-sharing agreement shall be stipulated by the agreement and the relevant operation agreement between the investors. The provisions of this clause shall also apply if a party to the production-sharing agreement is a person stated in paragraph fifteen in part one of Article 7 of this Law, regardless of the scope of the person's rights and responsibilities (participation share) under the production-sharing agreement stated in the conditions of a tender for the conclusion of the agreement.

*(in Article 9, part four was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

#### **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 Interagency 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 working body of the Interagency Commission.

*(part one of Article 11 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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.

*(part two of Article 11 as restated by the Law of Ukraine N 2562-VI dated 23 September 2010)*

3. Not later than three months from the day of registration of a draft production-sharing agreement, the Interagency Commission shall provide the investor with the conclusions,

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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 Interagency Commission shall ensure and coordinate the works related to the drafting and approval of the draft agreement.

5. Upon final approval and completion, a draft production-sharing agreement is initialized (approved) by the investor(s) and is registered again by the working body of the Interagency Commission, whereupon the draft production-sharing agreement is provided to the parties to the agreement for signing.

*(part five of Article 11 as restated by the Laws of Ukraine N 5463-VI dated 16 October 2012, N 331 -VII dated 18 June 2013)*

6. The procedure for registering the initial and final versions of the draft production-sharing agreement shall be established by the working body of the Interagency Commission.

*(part six of Article 11 as amended by the Laws of Ukraine N 5463-VI dated 16 October 2012, N 331 -VII dated 18 June 2013)*

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

1. The Cabinet of Ministers of Ukraine shall ensure timely execution of the documents stipulated by part three of Article 4 of this Law in the names of all investors - parties to the production-sharing agreement, the operator and/or shall assist, on the basis of the investor's (agreement operator's) request, with the issuance of the documents in the names of the respective contracted, subcontracted and other organizations (persons) so that they perform the

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works stipulated by the production-sharing agreement. The Cabinet of Ministers of Ukraine shall be directly responsible for observance by the State of the terms and conditions of the agreement.

*(part one of Article 12 as restated by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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 working body of the Interagency Commission shall verify the powers of the investors' representatives to sign the agreement.

*(part two of Article 13 as amended by the Law of Ukraine N 331 -VII dated 18 June 2013)*

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. In case of any discrepancies between the Ukrainian and English versions or any dispute concerning interpretation of any provision of the agreement the Ukrainian version of the agreement shall prevail.

*(part three of Article 13 as amended by the Laws of Ukraine N 5406-VI dated 2 October 2012, N 331 -VII dated 18 June 2013)*

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

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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.

*(part two of Article 14 as amended by the Law of Ukraine N 2562-VI dated 23 September 2010)*

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 working body of the Interagency Commission according to the procedure established by the same. The fee for State registration of the agreement shall not be collected.

*(Article 15 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012; as restated by the Law of Ukraine N 5463-VI dated 16 October 2012; as amended by the Law of Ukraine N 331 -VII dated 18 June 2013)*

### **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 it for use pursuant to the terms and conditions of the production-sharing agreement.

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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.

The special permit authorizing the use of subsoil under production-sharing agreements shall be issued in the name of each investor - party to the agreement on the basis and in line with the provisions of the concluded production-sharing agreement for the term of the agreement, within the subsoil area and on the conditions stipulated by the agreement.

*(in part one of Article 17, paragraph two was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

The special permit authorizing the use of subsoil under production-sharing agreements may be suspended or terminated early (including through cancellation) exclusively by the Cabinet of Ministers of Ukraine in compliance with the procedure and on the grounds stipulated in part two of this Article.

*(in part one of Article 17, paragraph three was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

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.

4. Production-sharing agreements may stipulate special stages, rules and procedure for using subsoil and doing works during the development of nonconventional hydrocarbon deposits. Such special stages, rules and procedure may differ from the stages, rules and procedure approved by



the law for the development of hydrocarbons other than nonconventional hydrocarbons. In the event of any discrepancies, the stages, rules and procedure for using subsoil and doing works stipulated by the production-sharing agreement shall prevail.

*(in Article 17, part four was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

**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;

- delivering to the other investor(s) under a multilateral agreement its (their) due portion of the profit and/or cost-recovery production or a monetary equivalent thereof, if the agreement stipulates so.

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*(in part one of Article 19, paragraph six was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

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.

Production-sharing agreements concerning hydrocarbons may stipulate continuous sharing of produced hydrocarbons.

*(in part two of Article 19, paragraph two was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

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 the performance of the works stipulated by the agreement, other activities carried out under the agreement and implementation of the investor's other obligations under the agreement, incurred after the official publication of results of a production-sharing agreement tender in accordance with part eleven of Article 7 of this Law or a decision of the Cabinet of Ministers of Ukraine made in accordance with part five of Article 6 of this Law shall be reimbursed, unless the agreement stipulates otherwise;

*(paragraph two of part five of Article 19 as restated by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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 taken into account during the calculation of the object on which enterprise profit tax will be levied in accordance with section III of the Ukrainian Tax Code;

*(paragraph three of part five of Article 19 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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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;

if a production-sharing agreement is entered into, cost-recovery production shall be used to reimburse the costs incurred by the investors - parties to the production-sharing agreement, including by a non-resident investor or its representative office, and the records of such costs shall be maintained by the operator in compliance with the procedure and on the conditions stipulated by the agreement;

*(in part five of Article 19, a new paragraph was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

the costs to be reimbursed under the agreement shall be documented in compliance with the procedure and on the conditions stipulated by the agreement;

*(in part five of Article 19, a new paragraph was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

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 and the conditions for using it.

*(in part five of Article 19, a new paragraph was added pursuant to the Law of Ukraine N 2562-VI dated 23 September 2010; as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

The costs of acquiring non-circulating assets and the costs of exploring, equipping and producing minerals shall be included in full at the time they are incurred in the costs to be reimbursed by cost-recovery production without depreciation.

*(in part five of Article 19, a new paragraph was added pursuant to the Law of Ukraine N 2756-VI dated 2 December 2010)*

## **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

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in the agreement; the rest of the produced production shall remain under the ownership of the State.

3. A production-sharing agreement may stipulate an option of sale (realization) by the agreement operator of the investors' portion of produced production or the entire produced production after it has been shared, including the State's portion, the operator having the obligation to deliver the monetary equivalent of the production portions to the investors and/or the State. The production-sharing agreement shall stipulate a procedure and conditions for realizing the produced production and delivering the monetary equivalent of the production.

*(in Article 20, part three was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

#### **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 independently determine realization conditions (particularly the right to freely select a buyer), to sell at unrestricted prices in Ukraine and outside (to 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.

*(paragraph one of part one of Article 22 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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

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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.

3. The investor's right to use the property that became the State's property and the usage conditions shall be stipulated exclusively by the production-sharing agreement.

*(in Article 23, part three was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

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

1. The right to geological, geophysical, geochemical, technical, economic and other information, as well as to 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, belong to 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.

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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.

*(part one of Article 24 as amended by the Law of Ukraine N 1170-VIII dated 27 March 2014)*

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. The investor shall have the right to deliver the information mentioned in this Article to its affiliates, advisors, contractors, subcontractors and other persons that need to receive the information in order to do the works stipulated by the production-sharing agreement and/or to implement responsibilities in compliance with the procedure established by the production-sharing agreement, provided they abide by confidentiality provisions.

*(part two of Article 24 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

**Article 25. Taxes, Charges and Other Mandatory Fees Payable During the Implementation of a Production-Sharing Agreement**

1. The specifics of collecting taxes from tax payers under a production-sharing agreement shall be stipulated in the Tax Code of Ukraine, and those concerning the calculation of cost-recovery and profit production shall be stipulated in this Law.

2. During the implementation of a production-sharing agreement the investor (agreement operator) shall pay the taxes and charges (mandatory fees) stipulated by the Tax Code of Ukraine, as well as the single contribution for the mandatory State social insurance of Ukrainian employees and the foreigners employed in Ukraine.

*(part two of Article 25 as amended by the Laws of Ukraine N 5406-VI dated 2 October 2012, N 5463-VI dated 16 October 2012)*

3. The single contribution for the mandatory State social insurance of Ukrainian employees and the foreigners employed in Ukraine shall be paid by the investor (agreement operator) on regular terms, on the conditions and in the amounts prescribed by the legislation of Ukraine as of the date on which a production-sharing agreement is signed, subject to Article 27 of this Law.

*(part three of Article 25 as amended by the Laws of Ukraine N 5406-VI dated 2 October 2012, N 5463-VI dated 16 October 2012)*

4. If a State fee or duty stipulated by the legislation of Ukraine must be paid for the purposes of getting a service or having a required act done by public authorities or institutions, the fee and duty shall be paid by the investor, subject to Article 27 of this Law.

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*(part four of Article 25 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

*(Article 25 as amended by the Laws of Ukraine N 429-IV dated 16 January 2003, N 2562-VI dated 23 September 2010; as restated by the Law of Ukraine N 2756-VI dated 2 December 2010)*

#### **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 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.

*(part one of Article 26 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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 under the agreement 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.

*(part three of Article 26 as amended by the Law of Ukraine N 5463-VI dated 16 October 2012)*

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

*(Part one of Article 27 has been deleted pursuant to the Law of Ukraine N 2562-VI dated 23 September 2010)*

1. The State guarantees that the investor's rights and obligations stipulated in the production-sharing agreement shall be governed during its term by the legislation effective at the time the agreement was entered into, except for the legislation that reduces or cancels taxes or charges, simplifies the regulation of the business activities of prospecting for, exploration and production of

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minerals, weakens the procedures of State supervision (control) of business activities, in particular the procedures of customs, currency, tax and other types of State control, or mitigates the investor's liability, which legislation must be applied from the date on which the legislation takes effect. The legislation stability guarantees shall not apply to the legislation amendments concerning defense, national security, public order maintenance and environmental protection matters.

*(in Article 27, a new part one was added pursuant to the Law of Ukraine N 3553-VI dated 17 June 2011)*

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.

*(part two of Article 27 as amended by the Law of Ukraine N 2562-VI dated 23 September 2010)*

#### **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 performance of a production-sharing agreement shall be carried out by the Cabinet of Ministers of Ukraine or by the central body of executive power authorized by the Cabinet of Ministers of Ukraine in compliance with the procedure and conditions stipulated by the production-sharing agreement and this Law.

*(paragraph three of part one of Article 28 as amended by the Law of Ukraine N 5463-VI dated 16.10.2012: as restated by the Law of Ukraine N 331 -VII dated 18 June 2013)*

At least once every five years the Cabinet of Ministers of Ukraine, with the participation of the authorized central body of executive power, shall organize and perform a complex inspection of the observance of the conditions stipulated by a production-sharing agreement. If substantial



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violations of the agreement provisions set forth in the agreement are revealed, the Cabinet of Ministers of Ukraine shall have the right to file with a court (or another dispute resolution body stipulated in the agreement) a request for the early cancellation of the agreement, the losses to be reimbursed with or without simultaneous suspension of the works stipulated by the production-sharing agreement.

*(paragraph four of part one of Article 28 as amended by the Laws of Ukraine N 2562-VI dated 23 September 2010, N 5406-VI dated 2 October 2012, N 331 -VII dated 18 June 2013)*

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 State, shall be indemnified by the Parties to the agreement in the proportions stipulated for production-sharing purposes.

*(part three of Article 29 as amended by the Law of Ukraine N 331 -VII dated 18 June 2013)*

### **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 ceased to be valid as non-constitutional, in the part establishing mandatory waiver by the state of judicial immunity, immunity in respect of preliminary injunction and enforcement of court judgments under production sharing agreements entered into with a foreign investor, on the basis of the decision of the Constitutional Court N 17-rp/2001 dated 6 December 2001)*

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

At the request of a foreign investor(s) the State shall have the right to waive the immunity under the production-sharing agreement. The waiver shall apply to all court decisions, international commercial arbitration awards, preliminary injunction awards, as well as enforcement of court and arbitration awards.

*(the text of Article 32 as restated by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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

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

1. For the purposes of the production-sharing agreement, the investor (foreign investor's representative office in Ukraine) (and/or) its 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, the accounts to be used exclusively for servicing the activities related to the production-sharing agreement.

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*(part one of Article 33 as restated by the Law of Ukraine N 5406-VI dated 2 October 2012)*

2. Collection of funds from the bank accounts opened by the investor (foreign investor's representative office in Ukraine) in the territory of Ukraine for the purpose of the production-sharing agreement may not be performed in a non-disputable manner.

*(part two of Article 33 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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

1. The money received by the foreign investor (its representative office in Ukraine) 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, including in compliance with the conditions set forth in such agreement.

*(part one of Article 34 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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 (the investors' representative offices in Ukraine) 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, owned by other investors or the State, as well as from other activities stipulated by the production-sharing agreement.

*(part two of Article 34 as amended by the Law of Ukraine N 5406-VI dated 2 October 2012)*

3. The operations of the investor (foreign investor's representative office in Ukraine) that are implemented for the purposes of the production-sharing agreement (including those related to the purchase of the equipment, materials, devices and other goods, works and services required for the works or other activities stipulated by the production-sharing agreement, including disposal of the produced production portion due to the investor (foreign investor's representative office in Ukraine), the other investor or the State) shall not be subject to the restrictions stipulated by the legislation of Ukraine concerning:

1) payments under export-import transactions, including those concerning the timeframes stipulated by the Law of Ukraine "On the Procedure for Making Foreign Currency Payments";

2) the obtaining and repayment of foreign currency credits, loans from residents and non-residents, including the provisions concerning the registration of relevant contracts and maximal interest rates under same;

3) remittance of foreign currency for the benefit of other investors under the respective production-sharing agreement and the State, including the provisions concerning the obtaining of an individual license from the National Bank of Ukraine;

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4) remittance of foreign currency for the benefit of non-residents concerning payments for works, services, intellectual property rights under contracts, including the provisions concerning a price expert evaluation certifying that prices are in line with market conditions and the documents certifying actual completion of services, works or assignment of intellectual property rights;

5) purchase, sale of foreign currency for payments to non-residents and repayment of foreign currency credits, loans;

6) placement of currency valuables to accounts and deposits outside Ukraine, including the provisions concerning the obtaining of an individual license from the National Bank of Ukraine.

*(in Article 34, a new part three was added pursuant to the Law of Ukraine N 5406-VI dated 2 October 2012)*

## **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.

2. The State shall ensure timely issuance of employment permits, and, if necessary, service cards to all foreign employees who hired by the investors (including by the agreement operator) pursuant to the production-sharing agreement. The employment permits and service cards shall be issued centrally exclusively on the basis of the investors' (including agreement operator's) requests to be filed with lists of the respective foreign employees to be made by the investors (including the agreement operator). The requirements concerning the submission of any other documents stipulated by the effective legislation for the obtaining of employment permits or service cards shall not apply.

On the basis of requests of a contracted, subcontracted or another organization (person), which/who performs works at the investor's request within the framework of the production-sharing agreement, and enclosed letters of support from the investor (including the agreement operator) the State shall assist with the timely issuance of employment permits and/or service cards for the purposes of employing the number of foreign employees necessary for the performance of the respective works under the production-sharing agreement by the contracted, subcontracted or another organization (person).

*(part two of Article 35 as restated by the Law of Ukraine N 5406-VI dated 2 October 2012)*

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### **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**

**Kyiv**

**14 September 1999**

**N 1039-XIV**