10 FACTS about PSA in UKRAINE

On February 28, 2019, the Ukrainian government opened public Production Sharing Agreement (PSA) tenders for nine oil and gas blocks. Bidders have three months, until May 28, 2019, to submit applications.

1 Timing and Eligibility

Bidders are required to submit their bids by May 28, 2019, and, after the determination and approval of the winner, that party will have one year to negotiate and conclude the PSA – i.e., by June 30, 2020 (but, this term can be extended for six months – until December 30, 2020). The PSAs will be concluded for 50 years. Legal entities (either Ukrainian or foreign), individuals and consortiums are all eligible for participation in the tenders.

2 Geological Information

Bidders will be allowed to obtain the secondary geological information (for instance, research reports) for free upon request to GeoInform of Ukraine. However, eventually the winners of the tenders will have to pay for the geological data. Any interested party may also acquire the initial geological information (for instance, seismic lines, well logging, etc.) from those institutions and companies which hold the referenced data in respect of each area. The tender terms for each PSA area include the list of the organizations which hold the geoscience data.

3 Investor Protections

All key industry-standard PSA protections are available to investors, including:

- legal stability – no future changes of law will apply to investors (other than legislative changes relating to matters of defence, national security, public order and environmental protection);
- fiscal stability – no tax increases will apply to investors; and
- international arbitration – as a dispute resolution mechanism.

4 Waiver of Immunity

Investors may negotiate with the Ukrainian government a clause in the PSA, under which the State waives its immunity. This means that the State can be subject to judgements awarded by foreign courts and international arbitration tribunals in relation to matters arising out of the PSA.

5 Licenses

Upon execution and registration of a PSA, the investor will be granted the licenses for the exploration and production of hydrocarbons resources within the relevant PSA area.

6 Cost Petroleum Share and Profit Petroleum Share

The Cost Petroleum Share (i.e., the production which will be transferred to the investor to cover its expenses) will be no more than 70% of total petroleum production, and the State’s Profit Petroleum Share (i.e., production to be distributed between the investor and the State – total production less cost petroleum) will be no less than 11%.
Each bid will be ranked based on the number of points as per an evaluation of each criterion:

- the best work program (with a focus on the comprehensive development of the area and ensuring early production) – 80 points;
- efficient utilization of natural resources according to the work program – 15 points;
- attractiveness of bids as regards production sharing in favor of the State – 30 points;
- the largest amount of investment – 35 points;
- efficient environmental protection measures – 15 points;
- level of financial security of the proposed work program – 30 points;
- previous experience in exploration and production of hydrocarbons, in particular from unconventional sources – 45 points; and
- utilization of goods, works and services of Ukrainian origin – 20 points.

The highest ranked bidder is to be selected as the winner.

**Currency Regulation**

Any Ukrainian currency restrictions will not apply to investors and their representative offices established in Ukraine for purposes of their PSA project (for instance, currency restrictions regarding payments under export-import operations, obtaining and repayment of loans in foreign currency, sale and purchase of foreign currency for payments to non-residents, etc.).

**Free Production Disposal**

Investors may use the hydrocarbons produced under PSA at their own discretion (for example, export of petroleum cannot be restricted, and the government may not artificially limit the petroleum sales price, which is to be determined on the basis of the formula indicated in the PSA).

**Bid Assessment**

PSA investors are subject to the following taxes: corporate profits tax (CPT), value-added tax (VAT), royalty, personal income tax, and the unified social contribution.

PSA investors are subject to the general CPT rate of 18%. No withholding tax applies to income paid to a non-resident under the PSA.

The Royalty rates are indicated in the PSA, but cannot be lower than those provided by the Tax Code of Ukraine as of the date of the PSA conclusion (currently, it is 2% of the product value for oil, and 1.25% of the product value for natural gas).

Goods imported and services provided by non-residents in Ukraine in respect of a PSA are exempt from VAT and customs duties. The export of the production is exempt from customs duty and excise tax; a 0% VAT rate applies.