On Both Sides of the Caspian Sea

The experts of GRATA Law Firm exclusively for Petroleum conducted a comparative analysis of the investment law in Kazakhstan and Azerbaijan.

— Let us start with a particular example. In the spring of this year, a Norwegian company - Statoil, announced the departure of Kazakhstan. Having withdrawn Abai project, it chose Azerbaijan and signed a Memorandum of Understanding with the State Oil Company of Azerbaijan Republic in respect to Zafar and Mashal structures in the Azerbaijani sector of the Caspian Sea. Does this mean that the investment climate in that country is more attractive than here? Could you conduct a comparative analysis of the situation in terms of granting subsoil use rights in the Caspian states (Kazakhstan, Azerbaijan)?

Yerbolat Yerkebulanov, Counsel, Natural Resources Department, GRATA Law Firm, Kazakhstan:

— The Law 'On Subsoil and Subsoil Use', dated 24 June 2010, (hereinafter - the 'RK Subsoil Law') establishes different investment modes for investors looking to get a contract for exploration and/or extraction of mineral resources on land or in the Caspian Sea.

General Procedure for Obtaining Subsoil Use Rights

The subsoil use right in Kazakhstan is granted under contracts concluded as a result of a tender or on the basis of direct negotiations. Previously, there was an option of entering into production sharing agreements (hereinafter - the 'PSA'), but the respective Law on PSA was abolished since 1 January 2009.

Since 2007, a moratorium on the granting of subsoil use rights on the basis of a tender was introduced in Kazakhstan, and the subsoil use right was only granted pursuant to direct negotiations. Earlier this year, there has been an announcement on lifting the moratorium and, as far as known, a package of deposits that will be put out to tender is currently prepared.

Based on the above, in practice, investors looking to get the right of subsoil use in Kazakhstan repurchase the right (a part thereof) from an existing subsoil user, or purchase directly or indirectly interests (shares) in such a subsoil user, or enter into an agreement with a national company (KazMunaiGas National Company JSC, Taufen Samruk National Mining Company JSC, regional socio-entrepreneurial corporations), which has the right to obtain subsoil use rights on the basis of direct negotiations.

It should be noted that since 2012, investors have the option to obtain subsoil use rights independently on the basis of direct negotiations, when they acquire the status of a subject of industrial innovation, in accordance with the Law 'On State Support of Industrial Innovations', dated 9 January 2012.

Requirements to the Sea Operations

The requirements to persons applying for the subsoil use right at sea are significantly higher than those applying for the same but on land.

For instance, a prerequisite for granting subsoil use rights at sea is the equity participation in the relevant contract of the national company at least fifty percent. Further, unless otherwise provided for by the agreement for joint activities between a foreign investor and the national company, the RK Subsoil Law establishes that the payment of the subscription bonus in favour of the Republic of Kazakhstan shall be made by its strategic partner.

Moreover, negotiation process may establish other requirements.

For example, according to information from public sources, with respect to Statoil the parties agreed that all costs of the exploration stage shall be borne by the Norwegian company. In addition, the parties agreed on the participation of Statoil in the construction of a jack-drilling up rig, which will be further used for the development of the Caspian shelf blocks.

We believe that one of the factors of the Statoil exit from Abai project located in the Kazakhstan sector of the Caspian Sea, was the duration of the negotiations (2006-2012) and, perhaps, some other requirements put by the national company.

Samir Hadjiyev, Counsel, Head of Baku Office, GRATA Law Firm, Azerbaijan:

— According to Article 8 of the Law of Azerbaijan 'On Subsoil' No. 439-IQ, dated 13 February 1998 (hereinafter - the 'AR Subsoil Law'), subsoil users in Azerbaijan may be individuals and legal entities of both Azerbaijan and other states. In this case, Article 4 of the RA Subsoil Law establishes that the subsoil within the territory of the Republic of Azerbaijan, without compromising the rights of any individuals or legal entities, are the property of Azerbaijan. Thus, having reserved the right of ownership, the state may grant the right to use the subsoil to separate legal entities and individuals both of Azerbaijan and foreign countries. Under this provision, the subsoil plots cannot be a subject of sale-and-purchase, gift or other forms of alienation. Despite the fact that according to the RA Subsoil Law the subsoil use right can be granted both for a fixed term and for an indefinite term, foreign investors tend to get this right for up to 30 years with a possible extension.

Please note that subsoil in the territory of Azerbaijan may be granted in use though both tender or auction and direct negotiations. According to the Regulation on the rules and conditions of tenders and auctions for granting subsoil use rights of Azerbaijan, a public auction (tender) is conducted without any restrictions on a number and type of subsoil users, while private auctions (tenders) are carried out for state-owned enterprises.

In case of putting up subsoil for an auction (tender), where the right to use it is exercising on the basis of the PSA signed, the terms of the auction (tender) should include regulations on fundamental criteria or...
Yerbolat Yerkebulanov, Counsel, Natural Resources Department, GRATA Law Firm, Kazakhstan

conditions of the PSA conclusion. In order to determine the winner of an auction, they form (tender) committee from among the representatives of the authorised ministries and committees of Azerbaijan. Following the auction (tender) a joint decision (by a majority votes of the Committee) is made. This decision is the basis for the subsequent issue of the permit (license).

Granting of subsoil into use by direct negotiations is implemented in the following cases:
- no auction (tender) on granting the subsoil use right;
- lack of bids in case of re-auction (tender) or presence of only one bid;
- operation of remaining reserves or, for specific reasons (economic, mining engineering, changes in the quality of mineral raw materials, etc.) of reserves remaining and stored in the subsoil (conservation);
- drilling and use of individual groundwater wells (except groundwater that is a source of centralised water supply);
- use of natural springs;
- subsoil areas that do not have a complex geological structure and provided for the construction and operation of underground facilities not related to mineral extraction, as well as for the construction and operation of underground simple-structured facilities:
  - if a company currently operates in connection with the previously obtained right to operate the mine allotment or right to use subsoil in a different way (if these activities require a permit or license).

Direct negotiations are finalised in the decision which serves as a ground for further granting of the license. The subsoil use right through direct negotiations is granted by ministries of Azerbaijan within their competence.

Samir Hadiyev, Counsel, Head of Baku Office, GRATA Law Firm, Azerbaijan

Forms of payment for the acquisition of subsoil use rights are established in accordance with the terms of the permit (license) for the use of subsoil areas. Thus, the payment for subsoil use can be made both in the form of cash payments and as a part of the extracted raw minerals, or other products produced by the subsoil user.

The requirements to persons applying for the subsoil use right at sea are that same as those applying for the same but on land.

In case with Statoil, which is already involved in large international projects in Azerbaijan: the development of Azeri-Chirag-Guneshli and development of Shah-Deniz gas field, as well as projects for transportation of hydrocarbons from those fields, this is a step aimed at strengthening the presence in the Azerbaijani sector of the Caspian Sea.

— What state among the states of the former Soviet Union has, in your opinion, the most logical and effective system for the protection of investors' rights, in particular, in the oil and gas sector? The concepts of 'energy patriotism' and 'resource nationalism', i.e. strengthening of influence and share of the state in the oil and gas sector, are interpreted in the world as two sides of a coin. What is a legal basis of this phenomenon in the Caspian countries?

Yerbolat Yerkebulanov, Counsel, Natural Resources Department, GRATA Law Firm, Kazakhstan:

— First, under the law of the Republic of Kazakhstan, international treaties ratified by the Republic of Kazakhstan shall have priority over domestic legislative acts.

Leila Makhmetova, Counsel, Head of Environmental Law Department, GRATA Law Firm, Kazakhstan

Kazakhstan signed treaties on mutual protection of investments with 44 countries that provide for additional guarantees of the protection of investors' rights: protection against discrimination, requisition and nationalisation, right to settlement of investment disputes by international arbitration in the absence of an arbitration agreement.

Second, the main legal basis for the protection of investors in the area of Kazakhstani subsoil use is Article 30 (Guarantees of Subsoil User Rights) of the RK Subsoil Law, according to which:

"Subsoil user is guaranteed the protection of its rights under the laws of the Republic of Kazakhstan. Changes and additions to the law worsening business results of the subsoil use under contracts do not apply to the contracts entered into prior to these changes and additions. Guarantees established by this Article shall not apply to changes in the legislation of the Republic of Kazakhstan in the area of national security, defence capacity, environmental safety, health care, taxation and customs regulation."

Section 'Guarantees of Contract Stability', similar in content to Article 30 of the RK Subsoil Law, is an essential part of subsoil use contracts.

1 For example, the legislation of the Republic of Kazakhstan on subsoil use was amended to provide for pre-emptive right of the State to acquire subsoil use rights, interests (shares) in a subsoil user or its direct or indirect founders. In addition, all large fields were included into the register of strategically important facilities, and the competent authority is entitled to initiate changes to the contracts in case of violation of economic interests of the Republic of Kazakhstan, or, in case of a threat to the national security - to terminate them on the basis of the decision of the Government of Kazakhstan.
In case of disputes between the Government and subsoil users regarding the inapplicability to the subsoil user of changes in legislation that worsen the position of subsoil users (except as provided by law), case law shows that the courts in the Republic of Kazakhstan adhere to the principle of contract stability.

In addition, many contracts of subsoil users provide for the right of foreign investors to settle a dispute in international arbitration. The decision of which is obligatory in the territory of the Republic of Kazakhstan.

Finally, it should be mentioned that investors have the right to appeal to the International Centre for Settlement of Investment Disputes.

Legal Framework of Energy Patriotism and Resource Nationalism

'Energy patriotism' in mining states, which is also classified in the negative sense by mineral consuming countries as 'resource nationalism', means strengthening the state's presence in projects related to exploration and mineral production.

Usuallly, in the world, this is done in different ways from direct change of ownership to indirect methods, including tax and customs regulations.

In Kazakhstan, 'energy patriotism' is performed through the purchase of government interests in projects when one of shareholders sells shares, on the basis of the preemptive right of the state, established by the subsoil law (the recent case - repurchase of ConocoPhillips Company right in the North Caspian project). We believe that all the legal formalities are complied with.

With respect to Kazakhstan, there is a known case where the state and investor entered into a dispute concerning violations of tax and customs legislation. Further, the dispute was resolved by the agreement to sell 10% interest in the project to the Government was reached in exchange for releasing claims to the investor.

Please note that another well-known case, where Kazakhstan has increased its share in the production sharing agreement on Kashagan project in 2008 was caused by the failure to perform obligations initially undertaken by consortium regarding the start of commercial production in 2008.

In summary, we believe that in general, the State took a tough stance towards subsoil users. And, if they fail to comply with commitments, there is a risk of claims from the State.

In general, the State increases its control over subsoil use projects through the purchase of interests (shares) in a subsoil user or its parent organisation on the terms agreed upon by the parties.

Samir Hadjiev, Counsel, Head of Baku Office, GRAIA Law Firm, Azerbaijan:

In contrast to Kazakhstan, where foreign investors in the oil and gas industry are offered to enter into a service contract, Azerbaijan offers foreign investors to conclude a Production Sharing Agreement (PSA), which after signing is ratified by the Milli Mejlis (Parliament) of Azerbaijan and thus brought to the level of law. Conclusion of the PSA, of course, provides investors with a sufficiently guarantees from the State, as well as special tax treatment, etc.

The procedure for disposal or transfer of interests is also set in the PSA. According to general provisions of the PSA, the parties to the agreement may dispose of their shares to third parties with the prior consent of the Republic of Azerbaijan. In this case, the disposal of the shares is made provided that the acquirer of the underlying obligations under the terms of the PSA, has sufficient financial and technical resources and managerial experience required for the performance of work under the PSA. Thus, the acquisition of interest in a company (PSA party), which already owns the subsoil use right, is possible upon an agreement with the PSA parties.

In addition, the Law of the Republic of Azerbaijan on Protection of Foreign Investments guarantees to foreign investors the rights equal to those of local investors. Azerbaijan concluded bilateral treaties with major countries, residence of which are investors in Azerbaijan, for the protection and promotion of investments and avoidance of double taxation. Let us also note the Convention on the Settlement of Investment Disputes between States and Foreign Nationals, Convention on Establishing the Multilateral Investment Guarantee Agency, Convention on the Recognition and Enforcement of Foreign Arbitral Awards, CIS Convention on the Rights of the Investor and other which Azerbaijan is a party to.

— In recent years, Kazakhstan has toughly raise to investors the issue of local content, demanding an increase in procurement of goods, works and services from domestic suppliers, as well as the nationalisation of the personnel. What is the legal framework for such requirements, and whether there are similar requirements in the legislation of other countries?

Yerbolat Verkebulanov, Counsel, Natural Resources Department, GRAIA Law Firm, Kazakhstan:

The legal framework for these requirements in Kazakhstan are:

1) Article 129.3 (Transitional Provisions) of the RK Subsoil Law, under which: 'In respect of subsoil use contracts earlier concluded with the state authorities of the Republic of Kazakhstan the parties shall be obliged to be governed with the requirements established by this Law in terms of the unification of terminology, submission of information on Kazakhstani content in personnel, local content in goods, work and services, that is calculated in accordance with the uniform technique for calculation by organisations of Kazakhstani content in case of procurement of goods, work and services, on planned and actually performed procurement of goods, work and services, in accordance with the procedure and under the forms to be approved by the competent authority.'

2) Article 61.2 (Types of Subsoil Use Contracts) of the RK Subsoil Law, which states that the contract should contain commitments, including local content in personnel, goods, works and services.

Further, under Article 37 (Reactive Effect of a Regulatory Legal Act of the Law of the Republic of Kazakhstan 'On Regulatory Legal Acts', dated 24 March 1998), a regulatory legal act does not apply to the relations emerged before its enactment, except for cases where retroactive effect of the legal act or a part thereof is provided thereby itself.
We would like to note that due to subsoil rights guarantees, i.e. the so-called "contract stability", from a legal perspective, the rights of subsoil users were met, as since the second half of 2010 the competent authorities (Ministry of Oil and Gas for oil and gas contracts, or the Ministry of Industry and New Technologies of the Republic of Kazakhstan for mining contracts) entered into relevant additional agreements with the subsoil users. According to the additions, the overwhelming number of contracts were added with minimum percentages of local content separately for goods, works, services and personnel, as well as with the liability for non-compliance therewith.

Possible Causes of Local Content Requirements in Kazakhstan

It is not a secret that the total investments of subsoil users in Kazakhstani economy amount to a significant sum in monetary terms. In the meantime, the media repeatedly gave examples that some subsoil users procured GWS from abroad at a price that is several times higher than the cost of similar GWS at the local market. Thus, these subsoil users received a number of significant advantages.

First, they had the opportunity to buy GWS from foreign companies that often are registered in the same country as the subsoil users (therefore money did not go to the development of local content in Kazakhstan). Second, all of these costs were reflected as performance of investment obligations under contracts each subsoil user has the annual financial commitments, the non-performance of which causes a risk of termination of the contract.

Third, after the start of mining operations, such subsoil users had the opportunity not to pay higher taxes on the basis of investments. Accordingly, the subsoil users had a direct interest to any way overstate their expenses at the exploration stage.

In our opinion, the amendments were introduced to the subsoil use legislation of Kazakhstan in order to prevent this trend.

Samir Hadjiyev, Counsel, Head of Baku Office, GRATA Law Firm, Azerbaijan:

In contrast to the legislation of Kazakhstan, Azerbaijan does not put tough local content requirements to foreign investors. This means, investors have the right to purchase, usually through tenders, the equipment, services and works, which they deem necessary. At the same time, please note that we are seeing an increase in the procurement of equipment, services and works from local suppliers and contractors, which clearly shows the increase of competitiveness of local suppliers.

As to the nationalisation of personnel, this requirement is reflected in the PSA and the joint activity agreement concluded with foreign investors. As a rule, the requirement means the achievement of 80% level of personnel nationalisation. Up to a certain period, this requirement was fulfilled by investors not effectively, however, with the gradual tightening of the labour migration policy of Azerbaijan in 2010 led to the adoption and entry into force of the Migration Code, dated 1 August this year, the investors involved in the process of fulfilling the personnel nationalisation requirement. Demonstrably, for a 20-year-old period a large number of professionals in the oil and gas industry formed in Azerbaijan, who incorporated education and experience to meet the current challenges in the industry.

- As is known, the Caspian Sea is an ecologically sensitive region of the planet.
- Kazakhstan and Russia are already performing production on sea shelf: Kazakhstan plans to begin production at the Kashagan offshore field by the end of the year. Could you conduct a comparative analysis of the environmental legislation of the Caspian states?

Leila Makhmetova, Counsel, Head of Environmental Law Department, GRATA Law Firm, Kazakhstan:

Comparative Analysis of the Environmental Laws in the Caspian States Kazakhstan:


In the legal regulation of relations connected with the use and protection of the ecosystems of the Caspian Sea we may distinguish two directions: setting limits for activities adversely affecting the conditions of the Caspian Sea, and legal regulation of the use of its resources: first, water, minerals, wildlife.

The limitation of the activities in the Caspian Sea are primarily set by the Water and Environmental Codes of Kazakhstan, as well as by the Law ‘On Subsoil and Subsoil Use’.

Thus, in the northern part of the Caspian Sea there is a state conservation area, which has temporary restrictions on some work, and subsoil use for economic activity. According to the Environmental Code of the Republic of Kazakhstan, in certain sites of the protected area each year from 1 April to 15 July, construction and geophysical surveys, and well testing and shipping are prohibited. During this period, the volume of oil production should be on self-contained provision with equipment, chemicals, fuels, lubricants and other materials and food. Subsoil users must ensure the accumulation and storage of oil waste; waste removal is only permitted after the said period. These limits are aimed to ensure the normal spawning run and fry emigration into the sea.

In order to save birds in their nesting places (reed beds, coastal sand spits and islands), subsoil users must ensure the accumulation and storage of oil waste near the places of their concentration. Since the seals rookery places are periodically changed, then all possible measures to identify places of concentration of seals shall be taken.

The Code prohibits the passage of aircraft over the habitats of birds and seals at a height of less than 1 kilometre. The ban does not apply to research and rescue operations, which are to be carried out after prior notification of the Ministry of Environment.

As for the legal regulation of the use of resources of the Caspian Sea, the most stringent rules are established by the legislation of Kazakhstan to petroleum operations. First of all, petroleum operations (exploration and production) are performed on the basis of a contract to conduct subsoil use operations. Prior to signing the contract, its draft is subject to obligatory state ecological examination in the Ministry of Environment, which is the verification of contract compliance with the effective environmental requirements of Kazakhstan. State environmental expertise is conducted also for design documents, under which all exploration and production is performed (projects of survey and assessment work, trial production, pilot production and field development, field development of products, etc.).
plans, feasibility studies). Without a positive opinion of the state ecological examination, the implementation of any project is prohibited.

In addition, the legislation of Kazakhstan provides for a number of requirements to conduct petroleum operations. Among the most important requirements there are as follows:

- Flaring of natural and associated gas is allowed only by permit of the Ministry of Oil and Gas. In this case, the commercial development of a field is allowed only upon the disposal and processing of gas.
- Subsoil users, which conduct petroleum operations at sea and in the protected area (i.e. the area stretching from the coastline for five kilometres towards the land in the territory of the Republic of Kazakhstan), are required to develop special programs for the prevention of marine pollution and approve them as a part of project documents. In the case of marine pollution from oil operations, the subsoil user is liable for the damage caused to the environment and to other persons, regardless of its guilt, unless it proves that the damage was caused as a result of force majeure or intent of the victim. For the construction of objects of the sea (well drilling, construction and operation of oil and gas pipelines, artificial islands, dams and buildings) there is a special permitting procedure. The law prohibits the construction and operation of oil storage tanks at the sea, as well as storage of oil at offshore facilities, except for temporary (not more than twenty days) storage of oil for its further transportation by tankers directly to onshore facilities.

In addition, prohibition applies to the discharge and disposal of wastes at the bottom of the sea. The discharge of waste water into the sea can only be performed with the permit and under the control of the government regulatory authorities, provided cleaning to established standards.

The use of water (including sea waters) is subject to a number of regulatory legal acts, the most important of which is the Water Code of the Republic of Kazakhstan, dated 9 July 2003. In particular, the sea waters withdrawal with the use of water withdrawing facilities, as well as discharge of waste waters into the sea water is only allowed under the permit for special water use, which is issued by the territorial authorities of the Committee for Water Resources of the Ministry of Environment. In cases of violation of water legislation such a permit may be revoked.

The principal legal act governing the use of the fauna of the Caspian Sea is the Law of the Republic of Kazakhstan, dated 9 July 2004 'On Protection, Reproduction and Use of Wildlife. This law provides for, in particular, the authorisation procedure for fisheries (both coastal and marine), as well as requirements aimed at protecting wildlife (protection of rare and endangered species, habitat protection, breeding conditions, migration routes and locations and concentrations of wild animals, etc.).

An important role in protecting the environment (including the eco-system of the Caspian Sea) has an institute of legal liability for environmental violations. For example, pollution, contamination, depletion of surface water, illegal construction that affects the status of water bodies lead to administrative liability for subsoil users and their guilty officials (fines, forced demolition of illegal structures that affect the status of water bodies). Pollution, contamination, depletion of waters, which caused significant damage to flora or fauna, fish stocks, forestry or agriculture, entail criminal liability. Bringing to administrative and criminal liability does not relieve the subsoil user of compensation for the harm caused to the environment. In this case, the amount of compensation depends on the nature of the damage caused and can be quite high, reaching hundreds of millions or even billions of tenge.

Samir Hadjiyev, Counsel, Head of Baku Office, GRATA Law Firm, Azerbaijan:

Comparative Analysis of the Environmental Laws in the Caspian States Azerbaijan


The whole territory of Azerbaijan, including the waters of the Caspian Sea (lakes), is divided into zones according to the degree of environmental risk. In these zones certain types of economic and other activities, which are defined by the law, are prohibited in order to ensure the environmental safety. Also, there are protection zones for the maintenance of water bodies in accordance with the environmental requirements, for prevention pollution of surface and groundwater, depletion thereof, as well as for the protection of wildlife and plants.

The environmental legislation of Azerbaijan provides for the appropriate permits and expert opinions for the use of nature, such as the Caspian Sea. Such permits and opinions include: special permit to use natural resources and expert opinion for the issue of the permits, special permit for water use, environmental compliance certificate, approval of limits for waste concentration, etc. Public authorities in the area of environmental protection, for the purpose of gentle nature use also have the right to restrict the use of limits and quotas for a certain time, to determine the location of the emissions, domestic and industrial waste into the environment. In accordance with the law, a contract between the user of natural
Специалисты Юридической фирмы GRATA экспертизно для Petroleum провели сравнительный анализ инвестиционного законодательства в Казахстане и Азербайджане.

- Начнем с одного конкретного примера. Весной текущего года норвежская компания Statoil объявила о выходе из Казахстана. Выйдя из проекта «Абай», она сделала выбор в пользу Азербайджана, подпав с государственной НКИКМ меморандумом о взаимопонимании по перспективным структурам зафар и мишал в азербайджанском секторе Каспия. Объясняет ли это, что инвестиционный климат в этой стране больше привлекательный, нежели у нас? Не могли бы вы провести сравнительный анализ предоставления права недропользования в прикаспийских государствах (Казахстан, Азербайджан)?

Ерболат Еркеуланов, советник, департамента «Природные ресурсы», Юридическая фирма GRATA, Казахстан:

- Закон РК «О недрах и недропользовании» от 24.06.2010 г. (далее — «Закон РК о недрах») устанавливает разные инвестиционные режимы для инвесторов, желающих получить контракт на разведку и (или) добычу полезных ископаемых на суше, либо на Каспийском море.

Общий порядок получения права недропользования

Пра во недропользования в РК предоставляется на основании контрактов, заключенных по итогам тендеров или на основании прямых переговоров. Ранее существовала возможность заключения соглашений о разделе продукции (далее — «СРП»), однако соответствующий закон РК о СРП был отменен с 1 января 2009 г.

С 2007 года в РК был установлен мораторий на предоставление права недропользования на основе тендеров, и право недропользования предоставляется только на основе прямых переговоров. В начале текущего года было объявлено о снятии данного моратория и, насколько известно, в настоящее время готовится пакет месторождений, которые будут выставлены на тендер.

Исходя из вышеизложенного, на практике инвесторы, желающие получить право недропользования в РК, либо перегуляют право недропользования (его части) у существующего недропользователя, либо покупают прямо или косвенно доли участия (акции) в каждом недропользователе, либо заключают соглашение с национальной компанией (АО «Национальная компания «КазМунайГаз», АО «Национальная компания «АзМунайГаз»), обладающая правом предоставления права недропользования на основе прямых переговоров.

Отметим, что с 2012 года у инвесторов появилась дополнительная возможность самостоятельно получить право недропользования на основе прямых переговоров, в случае если инвестор предлагает статус субъекта индустриально-инновационной деятельности в соответствии с Законом РК «О государственной поддержке индустриально-инновационной деятельности» от 9 января 2012 г.

Требования к операциям на море

Требования к лицам, проводящим на море право недропользования на море значительно более высокие, чем для получения права недропользования на суше.

Например, обязательным условием предоставления государством права недропользования на море является долевое участие в соответствующем контракте национальной компании в размере не менее 51% стоимости проекта, в случае если договор о совместной деятельности между иностранным инвестором и национальной компанией не предусмотрено иное, то Закон РК о недрах устанавливает, что уплата подоходного налога в пользу Республики Казахстан производится со его стратегическим партнером.

Помимо этого, в ходе переговоров могут быть установлены иные требования.

Например, в отношении Statoil, согласно информации из открытых источников, стороны договорились о том, что все расходы на стадии разведки норвежская компания должна будет вернуться на себя. Помимо этого, стороны согласовали участие Statoil в строительстве самолаза подводной буровой установки, к которой в будущем будет использоваться для освоения блоков шельфа Каспийского моря.

Мы полагаем, что фактором, послужившим уходу Statoil из проекта «Абай», расположенного в каспийском секторе Каспийского моря, является длительность переговоров (2006-2013 гг.), а также, возможно, некоторые другие требования, выдвинутые национальной компанией (АО «КазМунайГаз»).