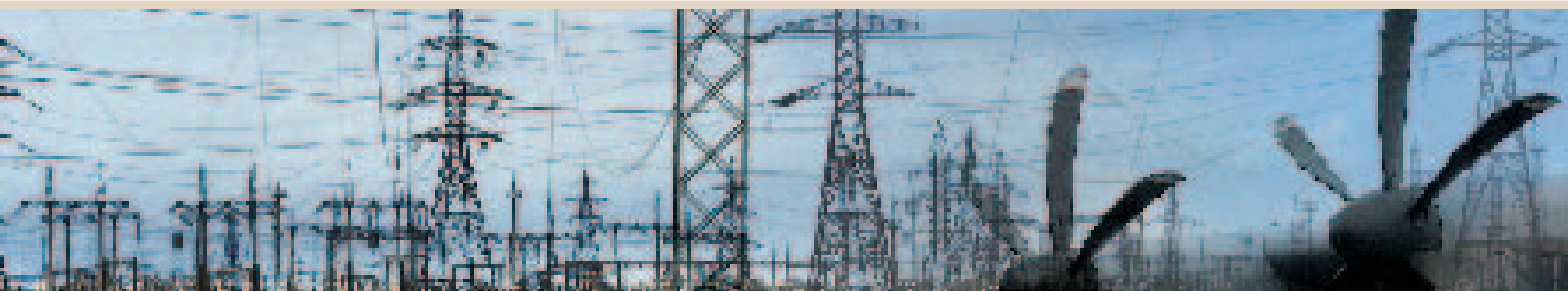


JANUARY 18, 2010



## NEWSLETTER FROM THE PRACTICE OF ENERGY AND NATURAL RESOURCES

This NEWSLETTER has been issued to keep Vasil Kisil & Partners clients and other interested persons informed of the latest developments in the Ukrainian legislation and the firm news.

This NEWSLETTER does not constitute a legal advice or an opinion rendered upon specific request. The information below has been prepared without enquiry into any individual case and should not be treated as a substitute for detailed advice in any such case.

### 1. Legislation

#### Changes in the Procedure for Granting Special Permits to Use Subsoil

The Cabinet of Ministers of Ukraine by its Resolution No. 1187 dated October 29, 2009 (hereinafter referred to as Resolution No. 1187) and Resolution No. 1232 dated November 18, 2009 (hereinafter referred to as Resolution No. 1232) amended the Procedure for Granting Special Permits to Use Subsoil in 2009 (hereinafter referred to as the Procedure).

### Read in this issue:

1. Changes in the Procedure for Granting Special Permits to Use Subsoil ..... 1
2. Procedure for Reissuing Special Subsoil Use Permits ... 2
3. Approval of National Bio-Fuel and Oil Products Standards ..... 3
4. Increasing Pressure on the Procedure for Licensing the Manufacture of Liquid Fuel from Biomass and Biogas.. 4
5. New Procedure for Licensing Exportation of Goods..... 4
6. Model Agreements in the Area of Electric Power Utilization with Alternative Sources..... 6
7. Model Agreements for Purchase of Shareholdings in Joint Stock Companies (Electric Power Supply Companies) .. 6
8. License Provisions for Carrying Out of Land Development and Land Evaluation Works ..... 6
9. Publication of Draft Law “On Specifics of Taxation of Operations Related to Implementation of Projects Intended to Decrease Greenhouse Gas Emissions” ..... 8
10. Events..... 9



Thus, it was established that said Procedure shall remain in force as long as respective enactment becomes effective for the next year.

Moreover, Resolution No. 1187 amends section 8 of the Procedure defining a list of persons authorized to obtain Special Permits to Use Subsoil without a tender. Said list names companies engaged in geologic surveys and subsurface water production, provided that they have a Special Water Use Permit. In addition to the application, a notarized copy of such permit and an excerpt from the Unified State Register of Legal Entities and Individual Entrepreneurs is required.

The Special Permit to Use Subsoil shall be issued for the period until the Special Water Use Permit is still in effect within 30 days after submitting the application and respective documents. A fee for granting such a permit is equal to 20 tax-free individual incomes.

It should be also noted that, in order to obtain such a permit, no prior approval of the Cabinet of Ministers of Ukraine is required to be granted in the form of respective resolution, except as otherwise required in section 8 of the Procedure.

Resolution No. 1232 modifies section 17 of the Procedure. The amendments so made extend the list of events when a subsoil use permit may be reissued without changing its effective period and the terms and conditions of use. Thus, the Ministry of Environment Protection of Ukraine shall re-issue permits in the following events:

- change in the name of a legal entity (subsoil user), change in the surname, first name and patronymic of an individual (subsoil user), and change in the location of the subsoil user;
- reorganization of a legal entity (subsoil user) in accordance with laws, if there is no state-owned share in the authorized capital of such legal entity (subsoil user) as of transfer the right to use the subsoil;
- when a legal entity (subsoil user) acts as a founder of a legal entity established in accordance with laws in order to continue activities on the subsoil block transferred to it for use. This rule shall be applicable if the newly established legal entity is provided with the property required to use the subsoil portion in compliance with the permit. If there are state-owned shares (participation interests) in the authorized capital of the founder, such a rule shall not be applicable.

## Procedure for Reissuing Special Subsoil Use Permits

In pursuance of section 17 of the Procedure for Granting Special Permits to Use Subsoil in 2009, the Ministry of Environment Protection by its order No. 637 dated November 27, 2009 approved the **Procedure for Reissuing Subsoil Use Permits** under which a



company (hereinafter referred to as the applicant), in order to have its permit reissued, submits to the Ministry of Environment Protection of Ukraine an application to be accompanied with the following documents:

- the permit which is to be reissued;
- copy of the applicant's constituent documents certified by a notary;
- copy of the applicant's state registration certificate certified by a notary;
- the certificate, certified by a notary, evidencing that applicant is recorded with the USREOU (for legal entities) or copy of the applicant's passport and identification number certificate, if any (for individuals);
- information (in the form of a certificate to be drafted by the subsoil user and certified with its signature and seal) related to special terms and conditions of the permit which is to be reissued, and the work program which fulfillment was stipulated by the agreement setting forth conditions of subsoil use;
- information (in the form of a certificate) as related to remaining mineral resources as of beginning of the current year according to prescribed forms of statistic accounting such as 5-gr, 6-gr, 7-gr (for objects in relation to which subsoil use permits have been issued for the purpose of mineral deposit production).

Should a permit be reissued in connection with reorganization of a legal entity (subsoil user) or should a legal entity (subsoil user) act as founder of another legal entity established in order to continue activities on the subsoil portion granted to it for use, the application shall be accompanied with other documents.

The Ministry of Environment Protection of Ukraine, after receiving an application and the documents required to be attached thereto, issues a certificate evidencing acceptance of such documents, and, thereafter, **within 30 calendar days**, provides the applicant with a reissued permit or motivated refusal of such reissuance.

A permit so reissued shall be granted on a new form taking into account the changes indicated in the application submitted for its reissuance after the applicant pays the fee imposed on granting special permits to use subsoil without tender.

## Approval of National Bio-Fuel and Oil Products Standards

The State Committee for Technical Regulation and Consumer Policy (hereinafter referred to as the Committee) by its order No. 375 dated October 15, 2009 approved for the first time ever five (5) **trial national solid bio-fuel standards of Ukraine**. All of said standards will



be effective for three (3) years, some from July 1, 2010 and until July 1, 2013 while the other from July 1, 2011 and until July 1, 2014.

The Committee approved by the same order the **national oil products standards of Ukraine** to be valid and effective as follows:

- from January 1, 2010 - in relation to methods of determining a sulfur concentration in oil products;
- from April 1, 2010 - in relation to liquid oil products, diesel fuel, crude oil and oil products;
- from July 1, 2011 - in relation to rubber or plastic hose pipes and tubes, diesel engines, tractors and agricultural and forestry machinery, harvester equipment, agricultural hydraulic sprinklers, etc.

## Increasing Pressure on the Procedure for Licensing the Manufacture of Liquid Fuel from Biomass and Biogas

The Cabinet of Ministers Ukraine by its resolution No. 1129 dated September 16, 2009 extended a list of documents required for issuance of a license for:

- manufacture, storage and sale of liquid fuel from biomass; and manufacture, storage and sale of biogas.

Therefore, in order to obtain a license to the above activities, the following documents shall be additionally furnished:

- copies of permits issued by state authorities for fire control, and labor protection monitoring, of favorable opinion issued by the state sanitary and epidemiologic service stating that the object is in compliance with the sanitary laws and by the environment and natural resources authority following results of the state environmental examination as issued in relation to the objects at the place of manufacture and storage of liquid fuel from biomass/biogas as certified by such authorities;
- copies of process procedures for manufacture, storage and sale of liquid fuel from biomass/biogas, which copies shall be certified as prescribed thereto;
- regulatory document (standard, technical specifications) under which liquid fuel is manufactured from biomass/biogas.

## New Procedure for Licensing Exportation of Goods

The Ministry of Economy of Ukraine by its order No. 991 dated September 9, 2009 approved:



- Regulation on the Procedure for Licensing Exportation of Goods (hereinafter referred to as the Regulation);
- Form of License to Export Goods and the Instruction for Filling-in such Form;
- Form of Application for the License to Export Goods and the Instruction for Filling-in such Form;

The Regulation, which is binding upon for all foreign economic entities irrespective the form of ownership, defines the procedure under which the Ministry of Economy of Ukraine and other authorized state bodies shall execute and issue licenses to export goods.

As provided in Section II of the Regulation, **in order to obtain the license**, an applicant, which is a foreign economic entity, shall provide the following documents:

- application for the license;
- reference letter in relation to executing the license with payment guarantee for the state duty charged on its issuance;
- copy of the state registration certificate as certified under procedure as prescribed thereto;
- copy of foreign economic agreement (contract) and all annexes and specifications thereto as certified under procedure as prescribed thereto;
- expert opinion (original) stating the country of origin and commodity code in accordance with the Ukrainian Commodity Classifier for Foreign Economic Activities to be issued by the Chamber of Commerce and Industry or Regional Chamber of Commerce and Industry;
- other documents required to be submitted in accordance with laws.

Moreover, the Ministry of Economy delegated to its structural units of regional, Kyiv and Sevastopol municipal state administrations and respective republic bodies of the Autonomous Republic of Crimea the right to issue licenses to export goods by foreign economic entities registered in respective regions and which goods book value under agreements (contracts) does not exceed USD 300 thousands, other than the goods which exportation requires approval from competent executive authority (in the events as defined by the Cabinet of Ministers of Ukraine) and to which quotas (quantitative and other limitations) are applicable.

**The Nontariff Regulation Unit** of the Ministry of Economy's Department for the State Control and Regulation of Foreign Economic Activities shall be responsible for executing and issuing licenses to export goods.

## Model Agreements in the Area of Electric Power Utilization with Alternative Sources

The National Electricity Regulatory Commission (hereinafter referred to as the NERC) approved in its Resolution No. 838 dated July 16, 2009:

- Model agreement on connection to electric power network of installation producing electric power with the use of alternative power sources;
- Model electric power purchase agreement between electric powers users, electric power producers and electric power producing companies with the use of alternative power sources;
- Model electric power purchase agreement between the ENERGORYNOK State Company and companies producing electric energy with the use of alternative power sources.

## Model Agreements for Purchase of Shareholdings in Joint Stock Companies (Electric Power Supply Companies)

**The Regulation of the procedure for holding tenders for sale of shareholdings in joint stock companies** (adopted by the order of the State Property Fund of Ukraine No. 1800 dated August 31, 2004) determines the terms and conditions on the agreements for purchase of shareholdings in joint stock companies as well as the basic requirements to such shareholdings purchase agreement. This Regulation also stipulates that such agreement is to be executed on the basis of the model agreement recommended by the State Property Fund.

Guided by the above norms the State Property Fund of Ukraine approved in its Order No. 1383 dated September 2, 2009 the Model Agreement for Purchase and Sale of Shareholding in Electric Power Supplying Joint Stock Company.

## License Provisions for Carrying Out of Land Development and Land Evaluation Works

The State Committee of Ukraine for Land Resources (hereinafter referred to as the “State Land Resources Committee”) approved in its Order dated August 5, 2009 the new License Provisions for carrying out business operations related to land development and land evaluation works.



Such License Provisions are mandatory for all business entities carrying out or intending to carry out land development works and land evaluation works in Ukraine irrespective of their form of incorporation and property form. The adopted License Provisions have determined the new organization, qualification, technologic and other requirements in respect of carrying out of the above works.

Thus, the licensing body in respect of carrying out of such kinds of operations is the State Land Resources Committee.

Pursuant to the License Provisions, entities intending to carry out the land development and land evaluation works are to apply, personally or through a body authorized by them, to the State Land Resources Committee and file an application for issued of the respective license. Where a company is planning to carry out particular types of work, such types of works only should be specified in the application form.

The application should be accompanied with:

- copy of the certificate of state registration of business entity or copy of certificate of introduction in the USREOU (Unified State Register of Enterprises and Organizations of Ukraine) certified by a notary or the body which issued the document original copy;
- statement signed by the applicant's manager certifying the business entity's ownership of the facilities and infrastructure required to carry out the respective type of operations;
- duly certified copy of the qualification certificate of the land plot monetary evaluation expert (in the event that the license to carry out the land evaluation works is obtained) and the excerpt from the State Register of Land Plot Monetary Evaluation Experts.

Within 10 business days after the receipt of the application, the State Land Resources Committee shall adopt a resolution, based on the results of the submitted documents consideration, for issuance of or refusal to issue the license and shall within 3 business days after such resolution is adopted notify the applicant in writing.

It should be noted that the previous License Provisions for business operations related to carrying out land development and land evaluation works have become inoperative pursuant to the Order of the State Committee for Entrepreneurship and the State Land Resources Committee No. 141/142 dated August 5, 2009.

The licensees operating pursuant to the effective licenses to carry out the land development works, licenses to carry out works related to land development, and licenses to carry out land evaluation works are to bring their operations in compliance with the requirements set forth in the License provisions before January 1, 2010.

## Publication of Draft Law “On Specifics of Taxation of Operations Related to Implementation of Projects Intended to Decrease Greenhouse Gas Emissions”

Since recent time, the official Web site of the National Environmental Investment Agency of Ukraine contains the Draft Law “**On Specific Taxation of Operations Related to Implementation of Projects Intended to Decrease Greenhouse Gas Emissions**”.

The draft law suggests amending the following legislative acts:

- the Law of Ukraine “**On the Uniform Customs Tariff**” dated February 5, 1992, No. 2097-XII in terms of the release from payment of duty for materials, equipment, components and goods to be used in implementation of projects intended to decrease the greenhouse gas emissions. Moreover, concerning the settlement of matters which may arise upon importation of materials, equipment, etc. into the territory of Ukraine, it is suggested that such goods importation procedure should be determined by the Cabinet of Ministers of Ukraine. Besides, the draft law provides for responsibility for violation of the designated purpose of such goods;
- the Law of Ukraine “**On Value Added Tax**” dated April 3, 1997, No. 168/ 97-VR in terms of the temporary exemption until December 31, 2012 from value added tax imposed on import operations in respect of goods (related services) to be used in the course of implementation of projects designated to decrease the greenhouse gas emissions. It is expected that the import of goods and related services is not subject to value added tax. At the same time, there is a provision regulating the responsibility for violation of the designated purpose of such goods and services;
- the Law of Ukraine “**On Corporate Profit Taxation**” dated December 28, 1994 No. 334/94-VR in terms of supplementing paragraph 1.6 of Article 1 in respect of determining the carbon units as the goods, and supplementing Article 1 with a new provision introducing a new term - “Carbon Unit”. Supplementing paragraph 4.2 of Article 4 with new subparagraphs 4.2.21 and 4.2.22 in respect of non-inclusion into the amount of gross revenue the funds or cost of property received from sale of carbon units or for implementation of projects designated to decrease the greenhouse gas emissions. I.e. the draft law suggests not to include in the amount of gross revenue the funds and/or cost of property which the taxpayer receives under the carbon units sale agreement, and not to include in the amount of gross revenue the funds and/or cost of property received by the taxpayer for implementation of a project designated to decrease the greenhouse gas emissions.



The outcome of adopting this draft law will be the legislative regulation of the matters in respect of taxation of operations related to implementation of projects for decrease of greenhouse gas emissions.

## EVENTS

### Ukraine to Be Admitted as Member of EU Energy Community

The Council of Ministers of Energy Community unanimously approved admission of Ukraine as a party of the EU Energy Community Treaty. The Resolution was adopted on December 18 this year on the Council meeting in Zagreb.

According to the information from the press service of the Ministry of Fuel and Energy of Ukraine, admission of Ukraine to the Energy Community will ensure the transparent and predictable mechanism of energy carrier tariffs formation, will foster the industry investment, and provide a possibility to use more efficiently the available export capabilities. The state will also have the possibility to participate in the EU internal electric power and gas market and will enjoy all the advantages of European energy market as its full-fledged member/

It should be reminded that Ukraine commenced negotiations for admission to the Energy Community Treaty on November 2008.

Energy Community is the organization the purpose of which is the South-East extension of European internal energy market.

The basic document of the Energy Community is the Energy Community Treaty which took effect on July 1, 2006. The Treaty has been ratified by 34 European countries.

### Climate Conference (COP15) in Copenhagen

The UN Climate Conference Copenhagen which was closed on December 25 resulted in its participants signing the final agreement - a political declaration named Copenhagen Accord.

In the text of the Accord the member states stipulated a limitation of global temperature growth to 2 degrees Celsius. The Accord also provides that the amount of subsidy to be given to developing countries for climate

# VASIL KISIL & PARTNERS

ATTORNEYS & COUNSELLORS AT LAW

change control is \$30 bln to be paid during the three next years and \$100 bln to be paid annually until 2020.

One of the principal news is that the USA which refused from Kyoto Protocol membership also acceded to the Accord. In this connection the speech of the leader of country with the world's second largest greenhouse gas emissions was very much awaited.

Let us remind that it was initially expected that Copenhagen conference participants will sign a document limiting the industrial emissions to substitute the Kyoto Protocol which will expire in 2012. However, the member states failed to agree in this respect due to serious controversies among the developed and the developing countries.

Please, do not hesitate to contact us for any further information on the topic of this Newsletter or to address you other legal service needs.



**Oleg  
Alyoshin**

Partner

[alyoshin@vkp.kiev.ua](mailto:alyoshin@vkp.kiev.ua)



**Polina  
Zagnitko**

Senior Associate

[zagnitko@vkp.kiev.ua](mailto:zagnitko@vkp.kiev.ua)

Leonardo Business Centre  
17/52-A B. Khmel'nitskogo St.  
Kyiv 01030 Ukraine

Telephone: +380 44 581 7777

Fax: +380 44 581 7770

E-mail: [vkp@vkp.kiev.ua](mailto:vkp@vkp.kiev.ua)

[www.kisilandpartners.com](http://www.kisilandpartners.com)