

**Part 2. Some issues of subsoil use licensing in KR**

<i>Issue</i>	<i>Existing situation in KR</i> (the Law of KR “On subsoil” and the Regulation on the procedure of subsoil use licensing dated 15.08.2007)	<i>Experience of some foreign countries</i>	<i>Proposals</i>
Licensor	State agency on geology and mineral resources of KR	<p>Chile, Bolivia – the rights of subsoil use are granted by courts.</p> <p>Mongolia, RF, RK – state authorities (ministries, agencies).</p> <p>Mongolia – licenses are issued and revoked by the Registration Mining Department of the Agency on Geology and Mining.</p>	State Agency on Geology and Mineral Resources of KR
The rights of subsoil use are granted through tenders, auctions and direct negotiations.	<p>1) tenders – for deposits of national importance</p> <p>2) auction</p> <p>3) direct negotiations</p> <p>4) registration of permits with local state administrations – for subsoil areas of individual prospecting development.</p>	<p>Tenders, auctions</p> <p>Peru, Mexico, Brazil, Tanzania - concession is provided in accordance with the principle “the one who comes first, gets all” – the right of first application (most of all for small deposits, deposits that are hard to develop, insufficiently studied deposits).</p> <p>Mongolia – a license for exploration is provided as per the right of first application (Article 18.1 of the Law “On mineral resources”).</p> <p>If the licensee engaged in exploration does not apply for a license for the development of this area, this license for the development shall be transferred for a tender (Article 24 of the Law “On minerals”).</p>	<p>Proposals are as follows :</p> <ul style="list-style-type: none"> <li>- auctions - on deposits, the list of which is approved by the Government of KR;</li> <li>- as per the right of first application, the right of subsoil use is granted: <ul style="list-style-type: none"> <li>1) for deposits that are not included in the list of deposits put up for auction;</li> <li>2) for deposits, if two auctions on these deposits were recognized failed.</li> </ul> </li> </ul>

		RF – tenders, auctions, direct, negotiations (Article 13.1 of the Law “On subsoil”).  RK – tenders, direct negotiations (Article 35, chapters 4 and 5 of the Law “On subsoil and subsoil use”).	
Tender	Tenders are announced and held on gold ore, oil gas and other objects of national importance by the decision of the Government of KR. The terms of tender and the terms of choosing the winner are determined by a tender committee of the Government of Kyrgyz Republic, specially assigned for each specific object. Tender terms and conditions with equivalent proposals of investors should provide for the priority right to a national applicant.	RF: The main criteria for choosing a winner during a tender for the right of use the subsoil area is scientific and technical level of the programs of subsoil geological exploration and use of subsoil areas, completeness of minerals extraction, contribution to the social and economic development of the territory, terms of implementation of the appropriate programs, efficiency of the measures on conservation of mineral resources and environmental protection, ensuring the national defense and national security (Article 13.1 of the Law “On subsoil”).	It is necessary to work out a detailed standard act on the procedure of holding a tender. It is proposed to include the representatives of local authorities that deal with land allotment in the tender committee in order to solve the problem of allocation of land allotments, as well as representatives of other state bodies (construction, environmental protection, etc.).
Auction	Granting of the right of subsoil use, except deposits of national importance, by holding auctions or through direct negotiations, is executed by the state body on subsoil use in accordance with the regulations approved by the Government of KR.	RF: The main criteria of choosing a winner during holding of a tender for the right of subsoil area use is the size of the once-off payment for the right of subsoil area use (Article 13.1 of the Law “On subsoil”).	Auctions – on deposits the list of which is approved by the Government of KR. It is necessary to work out a detailed standard act with respect to the procedure of auction holding.
Direct negotiations	In case of two unsuccessful tenders or auctions, due to the lack of sufficient number of pretenders, the right of subsoil use is provided by way of direct negotiations.  The right of subsoil use by way of direct negotiations is granted by the state authority on subsoil use, determined by the	RK (Article 35, Chapter 5 of the Law “On subsoil and subsoil use”): The following contracts are concluded without holding of a tender, on the basis of direct negotiations: 1) for extraction operations with an entity that has an exclusive right for obtaining of subsoil use right for extraction in connection with commercial detection	Are not recommended or can be held in limited cases. The list should be approved by the Government of KR.

	Government of KR, on applications of individuals and legal entities.	<p>on the basis of exploration agreement</p> <p>2) for construction operations and (or) operation of underground facilities not related to exploration or extraction.</p> <p>3) for operations relating to the exploration or extraction of minerals during construction (reconstruction, repairs) of rail roads and highways and bridges of public use</p> <p>4) for operations on exploration and (or) extraction with a national company.</p> <p>RF: direct negotiations are held with respect to deposits, specified in a special list (Article 10 of the Law “On subsoil”).</p>	
Prolongation of the license term	Is possible subject to fulfillment of all terms and conditions of the existing license agreement	<p>Mongolia: is possible subject to payment of all license fees and expenses on exploration, accomplishment of works, approval of the environmental management plan (Articles 22, 28 “On mineral resources”).</p> <p>RF: the term is prolonged in case of the necessity to complete prospecting and evaluation of deposit or development of the mineral deposit or execution of liquidation measures subject to condition that no terms of the license have been violated (Article 10 of the Law “On subsoil”).</p> <p>Kazakhstan: is possible if there were no breach by the subsoil user of certain obligations (Article 69 of the Law “On subsoil and subsoil use”).</p>	<p>Prolongation of the license term is possible subject to:</p> <ul style="list-style-type: none"> <li>- fulfillment of all terms and conditions of the existing license agreement</li> <li>- payment of all taxes and fees.</li> </ul>
Suspension of the right of subsoil use	Is possible for a term of up to 3 months in the following cases:	RF (Article 20 of the Law “On subsoil”): The right of subsoil use may be forfeited,	All grounds of the suspension should be explicitly set forth in the Law,

	<p>1) use of subsoil for the purposes other than they were provided for</p> <p>2) breach of the terms of the license agreement;</p> <p>3) emergence of force majeure.</p>	<p>suspended or limited ahead of time by the license issuing bodies in the following cases:</p> <ol style="list-style-type: none"> <li>1) emergence of immediate threat to the life and health of people working or living in the zone of impact of works connected with subsoil use;</li> <li>2) breach by the subsoil user of the substantial terms and conditions of the license;</li> <li>3) systematic violation by the subsoil user of the established rules of subsoil use;</li> <li>4) emergency situations (natural disasters, acts of war and others);</li> <li>5) if the subsoil user did not begin to use subsoil in the specified quantities within the term provided in the license;</li> <li>6) liquidation of an enterprise or other business entity to which subsoil was provided for use;</li> <li>7) at the initiative of the license holder;</li> <li>8) failure by the subsoil user to provide reports stipulated by the laws of the RF;</li> <li>9) at the initiative of the subsoil user and on his application.</li> </ol>	<p>for example:</p> <p>for a term of up to 3 months with specification of reasons for suspension and directions on the elimination of the violations in the following cases:</p> <ol style="list-style-type: none"> <li>1) violation of the requirements of mineral resources conservation, environmental and industrial safety provided by the laws of KR;</li> <li>2) failure to provide reports on executed works or providing reports on executed works containing inaccurate data;</li> <li>3) non-fulfillment of the requirements with regard to the accumulation of funds for reclamation of the land plot and liquidation of mine openings of the licensed object</li> <li>4) application of technologies in the development of minerals resources which endanger health and safety of workers and population as well as the irreparable damage to the environment and loss of the mineral reserved.</li> <li>5) force majeure.</li> </ol>
<p>Termination of the right of subsoil sue (dispensation, revocation)</p>	<p>in cases:</p> <ol style="list-style-type: none"> <li>1) completion of geological exploration, depletion of mineral reserves and (or) liquidation of an enterprise</li> <li>2) application of technologies in the development of subsoil endangering health and safety of workers and population as well as irreparable damage to the</li> </ol>	<p>Mongolia (Articles 53, 56 of the Law “On mineral resources”):</p> <ol style="list-style-type: none"> <li>1) expiration of the license term</li> <li>2) renunciation of subsoil use for the entire licensed area</li> <li>3) non-payment of license fees</li> <li>4) licensed area is announced the area for special purpose</li> </ol>	<p>All grounds of the renunciation of the subsoil use rights should be explicitly specified in the Law</p> <p>in cases:</p> <ol style="list-style-type: none"> <li>1) renunciation by the subsoil user of the right of subsoil use</li> <li>2) expiration of the term of the license for the right of subsoil use if the application on</li> </ol>

	<p>environment and loss of mineral reserves</p> <p>3) if technical design for works agreed with the state authorities on environmental protection, technical safety and by land rights holders is not provided within the term specified in the license agreement</p> <p>4) if within the period for more than one year following the obtaining of the license the subsoil user did not begin to develop mineral resources in the quantity stipulated by the terms of the license agreement</p> <p>5) voluntary renunciation of subsoil use or due to the expiry of the license term.</p>	<p>5) licensee did not fulfill his obligations on land reclamation.</p> <p>RF (Article 20 of the Law “On subsoil”):  The right of subsoil use is terminated in the following cases:</p> <ol style="list-style-type: none"> <li>1) upon expiration of the term provided in the license;</li> <li>2) in case of renunciation of the subsoil user of the right of subsoil use;</li> <li>3) in case of emergence of a certain condition (if it is stipulated in the license) upon emergence of which the right of subsoil use is terminated;</li> <li>4) in case of re-issuance of the license with violations of the terms provided by the Law. .</li> <li>5) in cases provided by the laws of RF on concession agreements.</li> </ol> <p>The right of subsoil use may be terminated, suspended or restricted by the license issuing authorities ahead of time in the following cases:</p> <ol style="list-style-type: none"> <li>1) emergence of immediate threat to the life and health of people working or living in the zone of impact of works connected with subsoil use;</li> <li>2) breach by the subsoil user of the substantial terms and conditions of the license;</li> <li>3) systematic violation by the subsoil user of the established rules of subsoil use;</li> <li>4) emergency situations (natural disasters, acts of war and others);</li> <li>5) if the subsoil user did not start to use subsoil in the specified</li> </ol>	<p>license transformation is not filed within stated time</p> <p>3) completion of the geological exploration, depletion of mineral reserves and (or) liquidation of a legal entity holding the right of subsoil use</p> <p>4) delay of license fees for more than 30 days and (or) royalty</p> <p>5) if within the term indicated in the license the licensee did not begin to use subsoil as per provided quantity.</p>
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<p>Procedure of suspension or discontinuance</p>	<p>The procedure is not transparent and unfavorable for the licensee:</p> <p>The decision is executed in the form of the Minutes of the Committee on the licensing of subsoil issues with specification of the date and reason of suspension of the term or cancellation of the license within 1 month from the date of detection of the violation of the terms of the license agreement.</p> <p>The licensee’s participation in the work of the licensing committee is not compulsory.</p> <p>An extract from the Minutes is to be sent to the subsoil user.</p>	<p>Mongolia (Article 56 of the Law “On mineral resources”):</p> <p>An authorized state body is to inform the licensee on the reasons. The licensee is entitled to present documentary evidence for consideration of the state body. If the licensee disagrees to the decision of the state body he shall have the right to go to the law.</p> <p>RF (Article 21 of the Law “On subsoil”):</p> <p>In case of violations by the licensee, the decision on the termination of the right of subsoil use can be taken in three months from the date of receipt by the subsoil user of a written notification on his violations if the subsoil user had not eliminated the violations within specified term.</p> <p>If the subsoil use disagrees to the decision on termination, suspension or restriction of the subsoil use right and has a right to appeal the decision in administrative or court proceedings.</p>	<p>It is necessary to work out of a detail procedure on termination or suspension subject to notification of the licensee, providing him of a term in order to eliminate violations, compulsory participation of the licensee in the work of the Committee when considering this issue.</p> <p>The alternative option may be the application of punitive measures for violation of the terms of license agreement.</p> <p>Introduction of annulment by court at this stage seems to be unreasonable.</p>