

Some issues on license and license agreement

<i>Issues</i>	<i>Existing situation in KR</i>	<i>Experience of some foreign countries</i>	<i>Proposals</i>
Concept of a license	A license is a document, representing a permit for the right of subsoil use, issued by a state authority on subsoil (Article 3 of the Law of KR “On subsoil”).	In the law of the Russian Federation (RF), a license is a document certifying the right of its holder to use subsoil area within certain limits in accordance with a purpose specified in it within established term, subject to the fulfillment by the holder of the terms preliminarily agreed upon (Article 11 of the Law of RF “On subsoil).	A license is a document representing a permit for the right of subsoil use issued by an authorized state body. The license is a form of a set form with the State emblem of the Kyrgyz Republic and seal of an authorized state body that issued the license on it.
License for the types of subsoil use	A license for geological survey of subsoil; a license for development of mineral deposits; a license for construction and operation of underground facilities not related to mining operations (Articles 9-12 of the Law of KR “On subsoil”).	In Mongolia: a license for exploration and a license for extraction (the Law “On mineral resources”). In Chile it is concession. It can be of two types – for exploration and extraction. In Columbia there are licenses of two types (for exploration and development), the law also provides for a concession agreement. In Brazil the license for explorations is called a permit (authorization) for exploration.	
Term of a license	A license for geological exploration of subsoil is issued for two years with subsequent prolongation for another 10 years; a license for development of mineral deposits is issued for a period established by the technical design, but no more that for 20 years with subsequent prolongation till mineral reserves depletion; a license for construction and operation of underground facilities not related to minerals extraction is issued for a term established by the technical design, but for no more that 20 years with subsequent prolongations if needed for terms reasoned by adjusted	Mongolia: a license for exploration is issued for a term of 3 years with a possibility of two prolongations of the license term for 3 years (Articles 19.9, 21.1.4 of the Law “On mineral resources”); a license for extraction is issued for a term of up to 30 years with a possibility of two prolongations for 20 years (Articles 26.5, 27.1.6 of the Law “On mineral resources”). In Chile concession for exploration provides for an initial term of 2 years with a possibility to prolong it for up to 4 years. The term of the concession for extraction is unlimited. In Columbia the term of issuance of the license for exploration depends directly on the size of the	More precise determination of terms for which a license may be issued and the possibility to prolong it.

	technical designs (Articles 9-12 of the Law of KR “On Subsoil”).	exploration area. The initial term of a license for deposit development is 10 years with a possibility of prolongation for another 10 years. The term of concession agreement is 30 years.	
Who can obtain a license	Legal entities and individuals of KR and of foreign countries (Article 8 of the Law “On subsoil”).	The law of Mongolia provides for the obligation of the person who applies for licenses to be registered and be tax payers in the territory of Mongolia (Article 7.1 of the Law “On Mineral resources”). In Chile – individuals and legal entities of Chile and of foreign countries. In Columbia foreign individuals and corporations have the same rights as Columbian individuals and legal entities do. However, foreign companies need to set up a branch, subsidiary or a subdivision in Columbia before obtaining of a concession agreement.	Individuals and legal entities of the Kyrgyz Republic, as well as foreign individuals registered with the state authorities in accordance to the laws of the Kyrgyz Republic, may be subsoil users.
Transfer of rights to a license	By the agreement of the state authority on subsoil, the licensee may transfer the rights for the license to third parties for pledge as additional security of the project for the licensed object.	In Mongolia the licensee may transfer the license in accordance with domestic laws of the country, branches and subsidiary companies may transfer the license to the parent (head) company. Also, under the laws of Mongolia, the licensee has the right to transfer the part of the licensed area for exploration upon permission and under control of the relevant state body. However, a license can be transferred under certain conditions only (payment of state duties, taxes and other payments provided by laws, confirmation that a person accepting the license accepts all rights and obligations arising out of the license transfer. etc.). The license along with relevant documents (results of exploration work, geological information, feasibility study and etc.). The license itself can not be the subject of pledge. In Chile concession may be freely transferred and pledged and be a subject of agreement. Generally speaking, concession is governed by the same	

		legal norms of civil law as any other immovable property is.	
Contents of a license agreement	<p>The license agreement is to contain the following information:</p> <ul style="list-style-type: none">- specific program of works agreed upon with the licensee and indication of force majeure circumstances which are beyond control;- necessary data on the license holder;- purpose of works related to subsoil use;- all types of payments and license taxes during subsoil use;- space coordinates of the corners of land, geological and (or) mine allotments for subsoil use;- terms of application of technologies of extraction and processing of mineral raw materials and rehabilitation of natural environment disturbed by subsoil use (the Law of KR “On subsoil”).	<p>In many countries there is no such concept as the “License agreement”; there are supplements to licenses which are their integral parts and relationships relating to subsoil use of an entity and appropriate state body are regulated in a separate agreement (contract).</p> <p>In the Republic of Kazakhstan (RK) respective contracts (for production, exploration, etc.) are concluded.</p> <p>The law describes in detail all procedures for working out of the contract, its approval, terms of the contract invalidity, term of validity, making changes and additions to the contract. The contract should contain a number of terms and conditions, the most significant of them are as follows: purpose of the contract, term of validity, contract area, the ownership right to the property and information, the right of the state to the acquisition and requisition of minerals, general rights and obligations of the parties, period of exploration and production (depending on the type of the contract), commercial discovery, financing, taxation, protection of natural resources and environment, safety of population and personnel, responsibility of the subsoil user for the breach of the contractual terms and conditions, force majeure, confidentiality, transfer of rights and duties, applicable law, procedure of disputes resolution, guarantees of the stability of the contract, conditions of suspension and termination of the contract, contract language.</p>	<p>A license agreement (agreement/contract) should be worked out for each type of minerals separately, or depending on the size of the deposit. The license agreement should be worked out in detail and should contain approximately the following conditions: purpose of agreement, the right of ownership to information obtained as a result of subsoil use, rights and obligations of the parties, the liability for the breach of obligations (warnings, fines, penalties, etc.), environmental protection, safety of local population and of subsoil user’s staff, terms of rights and responsibilities transfer, dispute resolution, applicable law, language, and term of the agreement; amount and terms of spending on social and economic development of the region and development of its infrastructure, conditions of ensuring equal conditions of remuneration for local staff in relation to employed foreign personnel, terms on personnel of the subsoil user may be included in the license agreement.</p>