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Recent developments in the rules concerning hydrocarbons concessions in Hungary

The summary has been prepared by the Energy Law Practice Group of **bpv JÁDI NÉMETH** Attorneys.

The recently published new ministerial decree on the mining concession tender procedure may be interpreted as a sign of the Hungarian National Development Ministry's willingness to provide certain changes of the process after the 2013 Bid Round.

The invitation for tender by the Hungarian National Development Ministry last fall (2013 Bid Round) seems to have failed to meet the expectations of the companies seeking to acquire hydrocarbons exploration assets in Hungary as the limited number of the areas opened for tender has not attracted a significant number of bids.

However, the recently published new ministerial decree 8/2014. (II. 18.) that replaces decree No. 81/2012 on the mining concession tender procedure (Decree) may be interpreted as a sign of the Ministry's willingness to provide certain adjustments to the process.

Overall, it may be stated that the Decree aims to detail and elaborate the existing rules in order to provide more clarity for the process.

The most significant envisaged changes of the Decree may be summarized as follows. The below described provisions have come into force on February 26, 2014.

- **Most importantly, the provisions of Article 6 (3) c), d) and e) enlisting certain content requirements of bids have been deleted.**

This change should be welcomed as these requirements were rather difficult to be honoured in the context of hydrocarbons exploration.

For example, the preliminary business plan envisaged during the period of the concession is unpredictable because the company making the bid is simply not in the position to be able to foresee at that stage whether there would be a discovery and, if yes, of what size.

Furthermore, the requirement of the submission of the description of the expectable effects onto the existing labour market seem irrelevant too, as such operations typically do not require a great amount of manpower that would significantly influence the labour market. And last, but not least, the requirement according to which the bidder has to include in the tender which contractors would participate in the first four years of the exploration activity has also been deleted. This change seems logical, too, as the old provision practically required the bidder to issue tenders and select its service companies before it has actually won the bid.

The lack of the above mentioned provisions is also likely to have the consequence that the Ministry would gain more discretion when establishing the details of the tender document, as the applicable rules of the Hungarian Mining Act and the related government decree No. 203/1998 only contain general requirements in this respect.

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- **The provision requiring the call for tenders to be published by the Ministry at least 30 days before the bid submission date has also been deleted.**

As the Mining Act requires the publication of the call for tenders in the EU Official Gazette minimum 90 days prior to the submission deadline, whereas the Act on Concessions requires for such an action at least 60 days, it may be assumed that the aim of deleting the 30 days deadline was to avoid discrepancies between the various regulations.

- **The Decree has also changed the rules of decision making of the Evaluation Committee (“Minősítő Bizottság”).**

Under the old regime, the Evaluation Committee was required to make a decision upon the preferred bidder with a two-third majority, whereas the new rules only require a simple majority vote. According to the new provisions, at least two-third of the members, including the chairman, must be present at the approval of the resolution. It remains however unchanged that the final decision must still be made by the minister on the basis of the Evaluation Committee’s proposal.

According to the Decree, the Evaluation Committee has to be established seven days before the deadline of the submission of the bids instead of fifteen days that was prescribed under the old régime. In our view, this may imply that the process could possibly become shorter, however, an eventual delay in setting up the Evaluation Committee may indeed cause a delay in the tender procedure. It should also be added that the Decree prescribes that the members of the Evaluation Committee would have to be nominated 30 days before the deadline of the submission of the bids.

- Please note that Government Decree 203/1998. (XII. 19.) on the execution of the Mining Act also contains provisions related to the concession award procedure. This decree has recently been amended by Government Decree 559/2013. (XII. 31.) to a small extent in respect of the concession bidding procedure these amendments have entered into force on 1 January 2014.
- **Concluding from the above, in our view the omission of the above described onerous requirements will definitely benefit future bidders, however it should be added that the potential success of the next bid round lies in the geological attractiveness of the blocks offered.**

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