

7.3 Securing Obligations

While the legal right to mortgage (pledge) real property rights as security for mortgagors' obligations exists in Uzbekistan, the relevant legislation is limited and inconsistent, and the practice of doing so is largely untested.

The *Civil Code* permits a debtor to mortgage a building or construction only with the simultaneous mortgage of the underlying land plot.

It should be noted that the provisions of the *Land Code* conflict with the foregoing rights to mortgage land, stating that a mortgage of land by the possessors and users of land is invalid, although it specifically permits the mortgage of a land plot lease. The *Land Code* does not prohibit the mortgage of land by the owner, but, as noted above, in practice the ability to own land in Uzbekistan is very limited.

The *Civil Code* also permits an entire enterprise or other property complex (including both movable and immovable property) to be mortgaged as a whole. However, legislation on the registration of mortgages of enterprises as a whole has not been adopted and, in practice, the assets of an enterprise can be registered only separately rather than as a whole.

8. SPECIFIC INDUSTRIES

8.1 Mining, Oil and Gas

Under the *Constitution*, subsoil, minerals, and land are the exclusive property of the State. The mining industry of Uzbekistan is regulated by national laws and implementing regulations. The *Subsoil Law*¹⁹ and the *PSA Law*²⁰ regulate legal issues pertaining to the use, possession, and disposal of subsoil resources in Uzbekistan. In particular, the *Subsoil Law* establishes the general procedure for obtaining a subsoil license, outlines the relevant regulatory authorities and the scope of their rights, and contains provisions regulating subsoil ownership and use. Mining rights are granted by the Cabinet of

¹⁹ Law "On Subsoil" dated 13 December 2002 (new edition), as amended.

²⁰ Law "On Production Sharing Agreements" dated 7 December 2001, as amended.

Ministers of Uzbekistan, represented by the State Committee of the Republic of Uzbekistan on Geology and Natural Resources (the “**Geology Committee**”), on the basis of subsoil use licenses awarded by Geology Committee as a result of tenders or direct negotiations with legal entities and individuals. The Geology Committee, being a principal regulatory body, establishes the terms of and conducts tenders for the grant of subsoil use rights and represents the State in negotiation, execution and monitoring of implementation and compliance with and termination of subsoil use licenses. A subsoil user must sign a Licensing Agreement with the Geology Committee which defines the terms and conditions of subsoil use.

8.1.1 Concession Activity

Pursuant to the *Concessions Law*,²¹ a concession is a permit issued on behalf of the state to a foreign investor, allowing the latter to engage in a specific type of business activity relating to property, land and subsoil on the basis of a concession agreement.

Despite the fact that the land and subsoil of Uzbekistan are the exclusive property of the state, in cases of strategic necessity, importance and economic expedience for the country, the state may assign the rights to possess and use such property to a concessionaire, at the same time reserving the exclusive right to dispose of the concession property.

Under Uzbek law, the supreme state agency authorized to act as the subject of concession-related relations at law is the Government of Uzbekistan, which may, in its turn, authorize state entities to act on behalf of the Government on concession-related issues.

8.1.2 Production Sharing

The *PSA Law* governs relations arising from the conclusion, enforcement and termination of a production sharing agreement (“**PSA**”) between the Government and an investor with respect to the search, exploration, and exploitation of oil, gas, and other mineral resources in Uzbekistan.

²¹ Law “*On Concessions*” dated 30 August 1995.

Under a PSA, the Government grants, on a compensable basis and for a definite term, the exclusive rights to search, explore, and exploit mineral resources on the indicated subsoil area.

Under the *PSA Law*, in exchange for relief from some types of taxes, the investor agrees to give the state a share of the resources that it produces. The investor may pay the state in products or in the form of proceeds from actual sales. The state's share of these resources consists of a royalty (based on a percentage of gross production), and a portion of "profit production." Profit production is defined as the production in excess of the compensation amounts of extracted resources given to the state and the investor, as well as subsoil use fees (*i.e.*, royalties and bonuses).

The *PSA Law* provides the following major guarantees to an investor:

- The ownership right to its share of profit production and the right to export such share freely, without quotas;
- A special legislative "stabilization" clause, providing that should the commercial terms of the PSA become less favorable as a result of subsequent Uzbek legislation, the terms of the PSA will apply. However, this provision does not apply to changes in law relating to safety standards for equipment and work, protection of the subsurface and the environment or health measures; and
- The right to refer disputes to international arbitration.

The *PSA Law* subjects an investor to corporate profits tax, land tax, tax on the use of water resources, a one-time paid fee (bonus) and regular fees for subsoil use (royalty) excluding excess profit tax, unified social insurance payment and excise tax.

8.2 Telecommunications

The main statutory acts governing telecommunications activities are the *Telecommunications Law*²² and the *Informatization Law*.²³ The Agency on Communication

²² Law "On Telecommunications" dated 20 August 1999, as amended.

²³ Law "On Informatization" dated 11 December 2003.

and Informatization (“UzACI”) is the authorized state body for administering and regulating telecommunication activities, and is authorized to license activities related to the fulfillment of design, construction, use and rendering services.

9. LICENSES

Many activities are subject to licensing in Uzbekistan. The Resolution of the Oliy Majlis “*On the List of Types of Activities Subject to Licensing*,”²⁴ and the Resolution of the Cabinet of Ministers “*On Measures for the Implementation of Law of the Republic of Uzbekistan on Licensing of Certain Types of Activities*,”²⁵ constitute the principal legislation in this field.

It should be noted that a number of other types of activities are also subject to licensing requirements (or other government approvals) in accordance with legislation specifically regulating those activities. Examples include banking, import/export activities (see Section 10 below), and certain construction activities.

Table 6: Licensing Authorities

Activities Subject to Licensing
State Licensing Authority: Cabinet of Ministers
Development, production, repair and sale of arms and ammunition, protective devices, military equipment and components and instruments (unless used for other purposes), as well as special materials and equipment for their manufacture
Development, production, transport and sale of explosives and toxic substances or articles using the above
Production and sale of protective devices against military poisons

²⁴ Resolution of the Oliy Majlis “*On the List of Types of Activities Subject to Licensing*” No. 222-11 dated 12 May 2001, as amended.

²⁵ Resolution of the Cabinet of Ministers “*On Measures for the Implementation of Law of the Republic of Uzbekistan “On Licensing of Certain Types of Activities”*” No. 236 dated 28 June 2002, as amended.