

Client Brief

ENERGY & NATURAL RESOURCES

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Clarifications Regarding the Issuance of Building Permits for Carrying Out Onshore Petroleum Operations

The Government of Romania has recently approved Government Ordinance no. 22/2014 amending and supplementing Law no. 50/1991 on the authorization of the performance of construction works (“**GEO no. 22/2014**”) bringing certain clarifications to facilitate and expedite the issuance of the building permits necessary to carry out onshore petroleum operations in favour of the holders of licenses, permits or authorizations issued pursuant to the Petroleum Law no. 238/2004 (the “Petroleum Law”) and to the Electric Energy and Natural Gas Law no. 123/2012 (the “Energy Law”).

1. Main Amendments

According to this new enactment, as an exception from the general provisions of Law no. 50/1991 on the authorization of the performance of construction works (the “**Construction Law**”) which require that the immovable property be identified including by reference to the cadastral number and land book number, for the purpose of the issuance of the urbanism certificate and of the building permit for the performance of the construction works which are necessary to carry out operations for the exploration/geological prospecting and production of petroleum and natural gas, *“the lands located in the exploration/prospecting/production block, which are not registered in the cadastral and land book registries, may be identified by the number of the field and of the land plot, by the property title and the possession handover minutes, as well as by any other means of identification provided by law”*.

Moreover, according to the amendments introduced by GEO no. 22/2014, the lease agreements concluded by the holders of licenses, permits or authorizations with the owners of the lands located in the production blocks constitute titles for the issuance of the building permit, provided that such agreements expressly contain the land owners’ explicit approval for the performance of construction works on such lands.

Furthermore, as an exception from the general rule according to which the issuance of the building permit based on a lease agreement may be made only for temporary constructions, the GEO no. 22/2014 provides that, based on a lease agreement concluded by the holders of licenses, permits or authorizations with the owners of the lands located in the production blocks, the building permit may also be issued for the performance of construction works which do not have a temporary nature.

Unless otherwise agreed by the parties in the lease agreements, the holders of licenses, permits or authorizations will have to restore the lands to their previous condition upon the termination of the lease agreements.

2. Shortfalls

The approval of this enactment is salutary, as it may contribute to streamlining the process of obtaining the necessary authorizations for carrying out petroleum operations. However, the amendments brought by GEO no. 22/2014 contain several inconsistencies by reference to the legislation in the petroleum sector, which might attenuate some of its positive effects.

As an example, we note that the new provisions make reference to the authorization of the performance of “*construction works which are necessary for carrying out operations for the exploration/geological prospecting and production of petroleum and natural gas*”. We believe that it should be made clear that all petroleum operations are subject to these new provisions (i.e. including the field development works), and not only the works related to exploration and production.

Furthermore, when defining the title which is the basis for the issuance of the building permit, the new enactment makes reference to lease agreements concluded by the holders of license, permits or authorizations with “*the owners of the lands located in the production blocks*”. This provision may be construed in a restrictive manner, in the sense that the lease agreements concluded with the owners of the lands located in the exploration or development-production blocks do not give the holder of the license, permit or authorization the right to the issuance of a building permit for works not having a temporary nature.

Another shortcoming of the new provisions consists in the absence of an express reference to the holders of petroleum agreements among the beneficiaries of the exemptions, since the reference to “*the holders of licenses*” may be construed, in a restrictive manner, as being made to the holders of licenses issued by the National Regulatory Authority in the Energy sector pursuant to the Energy Law.

3. Final Notes

GEO no. 22/2014 was published in the Official Gazette no. 353 of 14 May 2014 and entered into force upon its publication.

Taking into account the inconsistencies mentioned above, we believe that, in order to ensure a proper application of the provisions of the Construction Law to the construction works necessary for carrying out petroleum operations, the Construction Law should be further adjusted (either by means of the law for the approval of the GEO no. 22/2014, or separately, by a legal act of the same level – law, Government ordinance or Government emergency ordinance) to ensure the complete consistency of the provisions of the Construction Law with the provisions of the Petroleum Law.

If you are interested in receiving further information on this topic, please do not hesitate to contact us.

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