

# Key contacts



Partner | Warsaw  
christian.schnell@bsjp.pl

> Energy and Environment



Dr. Christian Schnell is BSJP Legal founding partner, member of the Corporate & Projects team and an active member of Real Estate Practice Group. He has experience in M&A and equity capital markets, projects as well as broad transaction experience. His clients include international infrastructure investors, companies investing in renewable energy, institutional investors on the real estate market, as well as international industrial players and financial investors. He is highly recommended for his expertise in energy law and PPP/PFI investments. He gained his legal qualifications in Cologne and Bonn and has been awarded a PhDs in economic sciences. Christian Schnell is Vice President of the Infrastructure Council of the Polish Confederation of Private Employers (PKPP Lewiatan), member of Business Europe and for 8 years a Board Member of the Polish German Chamber of Industry and Commerce. He is regular speaker on international conferences and author of more than hundred publications and articles. He is German native speaker and fluent in English and Polish.



Partner | Warsaw  
jaroslaw.sroka@bsjp.pl

> Real Estate and Infrastructure



Jarosław Sroka is dealing with the public procurement law. Prior to joining BSJP, he gained practical experience in international law firms. Jarosław Sroka specializes in advisory in the field of the public procurement law. He successfully advised local and foreign entities, applying for public contracts of substantial value, in particular in the scope of infrastructural projects. His activity covers complex advisory upon preparing offers, assessment of risks resulting from tender documentation, negotiations (competitive dialogue) with the contracting authorities, as well as drawing up and submitting legal remedies, along with representing clients before the National Appeal Chamber and district courts. He also has wide experience in advisory concerning turnover of real estate, in particular purchasing real estate, performance of construction investments, and lease of commercial areas. He is the author of publications on public procurement law in local and foreign press, and a speaker on industry conferences. Apart from the Polish mother tongue, he is fluent in German and English.

# Our relevant Practice Areas

- Banking & Finance
- Corporate / Commercial Agreements
- Construction & Engineering / Public Procurement
- Logistics & Transport
- Planning & Environment
- Projects
- Real Estate
- Litigation & Dispute Resolution

## Office details

### Polish offices

Al. Armii Ludowej 26  
PL-00-609 Warsaw  
T. +48 (0) 22 579 89 00  
F. +48 (0) 22 579 89 01

Other Polish offices can be found on: [www.bsjp.pl](http://www.bsjp.pl)

## International offices



# Public tender procedure in the process of prospection, exploration and production of shale gas



# Shale Gas and Public Tender Procedure

Regulation on shale gas is governed by several acts, mainly the Mining and Geology Law and Regulation of the Council of Minister concerning the public tender for obtaining mining usufruct dated 21 June 2005. However on 28 April 2011, Parliament passed a new Mining and Geology Law which is supposed to implement the Directive 94/22/EEC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons. Currently the new Mining and Geology Law is waiting for the Senate's acceptance (higher parliament's chamber).

The new Law will be more convenient for foreign investors mainly because it guarantees more equal rules for both foreign and domestic investors and easier access to the shale gas for foreign investors.

Both legal regulations, the presently binding Mining and Geology Law and the upcoming new Mining and Geology Law, require a concession for the prospection, exploration and production of shale gas. Present Mining and Geology Law require the investors to obtain mining usufruct for exploration and/or mining of natural resources. In principal, before the mining usufruct is granted, tender proceedings need to be held.

According to new regulation on Mining and Geology Law, the concession will be awarded in the course of public tender procedures and the mining usufruct agreement shall be concluded directly after obtainment of the concession by the winner of the public tender.

## Principals of obtaining mining usufruct in public tender procedure based on Regulation of the Council of Minister dated 21 June 2005

- announcement regarding the initiation of the proceedings for granting mining usufruct is made by the competent authority as well as upon application by the party concerned
- granting procedure should be held in an unlimited tender proceeding which guarantees equal rights and fair competition
- only a party that fulfills the requirements specified in the tender condition may participate in the tender proceedings
- evaluation of the tender should be based on objective criteria specified in the conditions of tender
- a party has the right to take legal measures against the evaluation results if it is deemed contrary to legal regulation
- until a legal matter is resolved, the agreement for mining usufruct cannot be signed

## Special regulation for maritime area

There is no special regulation concerning the prospecting, exploring and producing of shale gas on the Baltic sea.

## Public Procurement Law applicable to shale gas

In some circumstances, investors with concessions should observe tender proceedings specified in public procurement law regarding agreements connected to the performance of the activity related to prospection, exploration and production of shale gas.



## How BSJP can help you?

- provide legal support whilst holding unlimited tender proceedings
- advising on the content of a tender
- preparing and submitting legal measures
- acting on behalf of a party whilst submitting the tender