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GUIDE TO OIL AND GAS INVESTMENT & PROJECTS IN AFRICA

Alliance of Leading Law Firms
Alliance des Cabinets de Premier Plan
Aliança dos Principais Escritórios de Advocacia

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About LEX Africa

Doing business in Africa is associated with diverse challenges and risks and must accordingly be founded on a strong legal base.

LEX Africa is Africa's first and largest Alliance of African law firms. It was founded in 1993 and has over 700 lawyers in 30 African countries. Only African law firms may join the Alliance.

The African oil and gas sector has become increasingly important and raises complicated legal, regulatory and operational opportunities, challenges and risks. LEX Africa has an established track record in advising clients in this sector for over 30 years.

LEX Africa effectively covers the entire African continent. Each member is a full service business law firm with expert knowledge and experience in both local law and the local business, political, cultural and economic environment.

LEX Africa accordingly provides a "one stop shop" and Pan African legal team for cross border and local legal solutions to clients.

Chairperson of LEX Africa

Pieter Steyn
+27 11 535 8296
psteyn@werksmans.com

Preface

The African continent has abundant petroleum resources and a thriving upstream oil and gas industry. Oil and gas contribute significantly to the economies of countries that exploit these resources. Countries on the continent must, therefore, develop appropriate legal regimes to deal with the peculiar challenges and constraints related to the development and utilisation of oil and gas resources. In addition to appropriate legal regimes, the business of exploration and production of oil and gas resources requires significant investments, and investors always want to understand the risks and rewards related to investments in particular countries before making investment decisions.

This Oil and Gas Guide aims to offer readers a basic overview and understanding of the legal, regulatory, and commercial issues underlying the respective upstream oil and gas regimes across Africa ranging from licensing, state participation, local content and local participation, taxation, etc. The Guide offers a general overview of the legislation relevant to making investment decisions related to petroleum operations in participating countries.

It is hoped that our insights into the upstream oil and gas sector will be both informative and practical. There is no doubt that the key issues raised in the Guide will assist in gaining a better understanding of the various oil and gas regimes operative across the continent. As the industry continues to grow in Africa, we will continue to update this Guide to ensure that readers are afforded the latest information on the relevant regimes.

LEX Africa is the first and largest African legal alliance with a long history of assisting clients across the continent. It has been a privilege to collaborate with participating Lex Africa member firms to put this Oil and Gas Guide together.

We sincerely appreciate the efforts of all participating member firms towards producing this maiden edition of the Oil and Gas Guide for Africa.
We would also like to thank the team from Bentsi-Enchill, Letsa & Ankomah, especially Godwin Ofosuhene Nkrumah, Senior Associate, who worked tirelessly to assist in the production of this publication.

Seth Asante and Seyram Dzikunu

Managing Partner
Head, Financial Institutions & Capital Markets
Head, Energy & Infrastructure
Bentsi-Enchill, Letsa & Ankomah

Seth Asante
+233 302 208 888
seth.asante@bentsienchill.com

Partner
Energy & Infrastructure
Bentsi-Enchill, Letsa & Ankomah

Seyram Dzikunu
+233 302 208 888
sdzikunu@bentsienchill.com

Senior Associate
Energy & Infrastructure
Bentsi-Enchill, Letsa & Ankomah

Godwin Ofosuhene Nkrumah
+233 302 208 888
gonkrumah@bentsienchill.com

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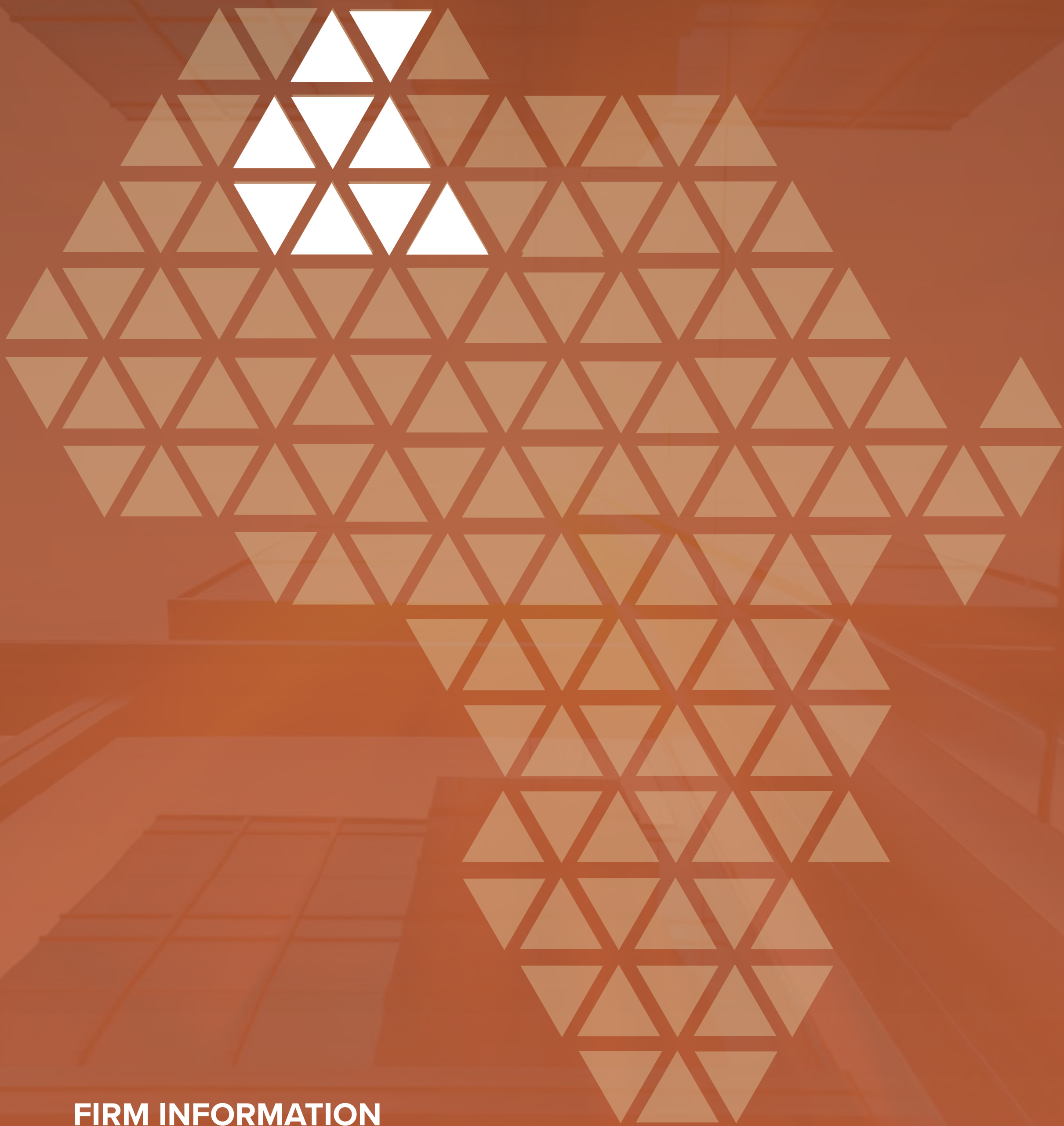

FIRM INFORMATION

Website address : **www.loucif-law.com**
Languages spoken : **French, English, Arabic**
Telephone : + 213 5 52 58 28 93
Address : 40, Rue de la Madeleine, 16035 Hydra Alger Algérie
Contact : Rym Loucif
Email : rloucif@loucif-law.com

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

The oil and gas sector in Algeria is regulated by Law No. 19-13 of 11 December 2019 (the "Hydrocarbons Law") and more than 40 implementing texts.

The institutions in charge of hydrocarbon activities are as follows:

- The Ministry of Hydrocarbons;
- The National Agency for the Valorisation of Hydrocarbon Resources (Agence Nationale pour la Valorisation des Ressources en Hydrocarbures or **"ALNAFT"**); and
- The Hydrocarbon Regulatory Authority (Autorité de Régulation des Hydrocarbures or **"ARH"**).

The main powers of these institutions are as follows:

- The Ministry requests the granting of mining titles, which are granted to ALNAFT by presidential decree, and it requires the approval of hydrocarbons contracts and their amendments by the Council of Ministers;
- ALNAFT remains the holder of the mining title and is responsible for organising tenders for upstream activities, drafting hydrocarbons contracts and granting the right to carry out exploration and/or exploitation activities within a defined perimeter; and
- The ARH remains the regulatory authority, responsible in particular for ensuring compliance with the technical regulations applicable to hydrocarbon activities and the standards applicable to the construction of pipeline and storage transport infrastructure.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Title to oil and gas resources

The Algerian state grants ALNAFT the right to prospect, explore and develop oil and gas reserves by issuing mining titles.

In turn, ALNAFT is entitled to grant three types of authorisations required for the exploration and exploitation of oil and gas, namely:

- A prospecting licence, which authorises the operator, on a non-exclusive basis, to carry out prospecting activities within a defined area;
- An upstream concession, under which upstream activities are carried out exclusively by Sonatrach; and
- Hydrocarbons contracts, under which upstream activities are carried out by Sonatrach and international oil companies. ALNAFT, after having obtained the mining title relating to the perimeter, grants an "award deed" (an administrative deed known as acte d'attribution) to the contracting parties of a hydrocarbon contract.

Pre-qualification process

Companies that qualify to acquire exploration and production rights are usually selected through a public tender process organized by ALNAFT. This tender process is open exclusively to pre-qualified companies, which means those holding a certificate issued by ALNAFT based on legal, technical, and financial criteria.

Overview of Procedure

Exploration and production rights in Algeria's petroleum sector are granted through a multi-step process. The Algerian State grants these rights through the delivery of mining titles to ALNAFT. ALNAFT, in turn, grants three types of authorizations for oil and gas activities: prospecting permits, upstream concessions, and hydrocarbons contracts.

Prospecting Permit: This permit allows operators to conduct non-exclusive prospecting activities within a defined area. It is initially issued for two years and can be renewed once for an additional two years.

Upstream Concession: Sonatrach, the national oil company, may carry out upstream activities alone under an upstream concession, which can be granted for exploration, exploitation, or discovered deposits.

Hydrocarbons Contracts: These contracts involve partnerships between Sonatrach and Algerian or foreign contractors. There are three types of hydrocarbons contracts: the production sharing contract, the risk services contract and the participation contract.

Duration of Rights

- Prospecting Permit: Initially issued for two years, renewable once for an additional two years.
- Upstream Concession: Granted for an initial period of 30 years.
- Hydrocarbons Contracts: Typically concluded for an initial period of 30 years, which includes an exploration period of up to seven years and an exploitation period starting from the approval of the development plan. The hydrocarbons

contract may be extended for up to ten years, except when it relates to discovered deposits, where it can be extended for a maximum of ten years.

State's Interest

The Algerian Constitution and the Hydrocarbons Law affirm that subsoil resources, including hydrocarbons, are owned by the public community. These resources are under the oversight of the Algerian State, and mining titles are exclusively issued by presidential decree to ALNAFT. The award of an upstream concession or the conclusion of a hydrocarbons contract is contingent upon ALNAFT obtaining a mining title. Importantly, these mining titles do not grant ownership rights over the land's soil or subsoil.

The Algerian State has a significant interest in exploration, development, and production operations through its involvement with Sonatrach and its regulatory role through the Minister of Energy, ALNAFT and ARH. Sonatrach, in some cases, can have sole rights to upstream activities. The State also retains the authority to approve upstream concessions and hydrocarbons contracts through decrees issued by the Council of Ministers.

INDIGENISATION REQUIREMENTS

Local Content Requirements

There are local participation requirements in Algeria's oil and gas industry. The hydrocarbons contracts must include provisions that give preference to Algerian companies for the supply of goods and services produced in Algeria, provided that the conditions of price, quality, and delivery times are competitive. Additionally, there is a priority for employing Algerian workers in upstream operations, and there is an obligation to train Algerian workers as specified in the hydrocarbons contract. ALNAFT is responsible for promoting local content, and development plans must contain local content provisions.

Special Rules for Foreign Persons

Foreign persons or companies can participate in Algeria's oil and gas industry through various types of contracts, such as participation contracts, production-sharing contracts, and risk services contracts.

For example in production sharing contracts and risk services contracts, the foreign contractor cannot receive more than 49% of the total production or income generated from the production activities for both "cost oil" and "profit oil,". The specific terms and conditions for foreign participation, including profit-sharing and financing, are defined in the contracts, taking into account these revenue-sharing requirements.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

Transfers of interests in hydrocarbons contracts in Algeria are subject to specific rules and procedures:

Transfer of Rights and Obligations by the Foreign Partner

There are local participation requirements in Algeria's oil and gas industry. The hydrocarbons contracts must include provisions that give preference to Algerian companies for the supply of goods and services produced in Algeria, provided that the conditions of price, quality, and delivery Any proposed transfer of rights and obligations by the foreign partner, including transfers to affiliates, requires the approval of ALNAFT.
ALNAFT's decision on the transfer must be made within 90 days from the receipt of the application.

Sonatrach has a right of pre-emption (except in the case of transfers to affiliates) and must decide within 60 days of the receipt of the application.

If Sonatrach exercises the right of pre-emption, the transfer occurs under the same terms and conditions as initially contemplated.

Where Sonatrach does not exercise the right of pre-emption, (i) the transfer by the foreign partner of its rights and obligations occurs after approval of the transfer by ALNAFT, or (ii) ALNAFT notifies its refusal of the contemplated transfer.

Change of Control of the Foreign Partner

Any change of control, directly or indirectly affecting the foreign partner, must be notified to the Minister of Hydrocarbons.

The minister must determine if the change of control is compatible with maintaining the foreign partner's interest within 90 days from receipt of all required information.

Four types of decisions can be made by the minister:

- The change of control is compatible with maintaining the foreign partner's interest.

- The change of control is compatible if prerequisites defined by the minister are satisfied.

- The minister may authorise the partner to transfer its rights and obligations under the contract to any other person within a specified period of time.

- The change of control is not compatible, in which case, the rights and obligations are transferred to Sonatrach or divided among other parties with compensation.

Transfers are formalized through an amendment to the hydrocarbons contract, with amendments involving transfers to affiliates not requiring Council of Ministers approval.

A non-deductible transfer fee of 1% of the transaction value applies to most transfers, except for transfers between affiliates and transfers by Sonatrach.

These requirements and procedures are defined by Decrees No 21-98 (dated 11 March 2021) and No 21-318 (dated 14 August 2021) which govern the transfer or assignment of exploration and production rights, as well as changes of control in entities holding these rights.

Security

The hydrocarbons contracts and the rights arising therefrom must not be subject to any pledge or guarantee.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Exploration Operations

Exploration activities leading to commercial discoveries in Algeria require the submission and approval of a development plan to ALNAFT. This development plan covers all commercial discoveries under a single upstream concession or hydrocarbons contract. ALNAFT approves the development plan within 60 days of submission. Annual work programs are submitted and require ALNAFT's review, and any modifications to the work program must also receive prior approval from ALNAFT.

Transition to Development and Production

The transition from exploration to development and production is initiated upon the declaration of a commercial discovery. Any commercial discovery is subject to a development plan; it being specified that all commercial discoveries under an upstream concession or a hydrocarbons contract are subject to a single development plan.

The development plan (and any revision thereto) is submitted to ALNAFT for approval, which is delivered within 60 days from the date of submission.

Relinquishment Requirements

Throughout the exploration phases, the perimeter of operations may be reduced according to the terms and conditions stipulated in the upstream concession or award deed. Surfaces not covered by the development plan are returned to ALNAFT at the end of the exploration period unless exceptional circumstances apply. ALNAFT has an automatic withdrawal mechanism if no commercial discovery is declared. Additionally, Sonatrach and contracting parties may voluntarily relinquish portions of the perimeter during the exploration period under certain conditions.

PROCESSING, REFINING AND EXPORT

In Algeria, the processing and refining of oil and gas are regulated activities governed by Executive Decree No 21-320.

These activities encompass various aspects, including refining petroleum and condensate to produce petroleum products, processing petroleum-derived products to obtain various compounds, liquefying natural gas for LNG production, and more.

These activities can be undertaken by Sonatrach either independently or in collaboration with domestic or foreign entities. Before commencing any infrastructure project for these activities, approval from the Minister of Hydrocarbons is required.

Additionally, the effective operation of the infrastructure necessitates obtaining a final approval from the Minister, with adherence to specified conditions. The purchase or transfer of operational infrastructure also requires ministerial approval.

Overall, these activities must align with the national development plan for refining and processing infrastructure as approved by the Minister of Hydrocarbons.

SERVICES INDUSTRY

Algeria has a competitive oil and gas services industry.
Entry requirements for oil and gas services companies in Algeria may include compliance with local regulations and obtaining necessary licenses.

ENVIRONMENTAL

Oil and gas operations require environmental authorizations and obligations, including risk studies and environmental impact assessments, depending on the type of facility or installation involved. These requirements are governed by Decree No 21-319, with different categories of facilities subject to varying levels of scrutiny and approval processes.

Environmental authorizations and obligations for oil and gas operations follow a two-phase process:

- Preliminary Phase: This phase involves obtaining prior approval for the creation of the facility. The approval is delivered by ARH or the wali (senior administrative official responsible for a wilaya or administrative division), depending on the nature of the facility.

- Post-Construction Phase: After the construction of the facility is completed, a visit by the Hydrocarbon Commission, relevant to the administrative division or wilaya, is conducted to verify compliance with prior approval requirements. The operating authorization is then issued, by the Minister of Hydrocarbons or the wali, depending on the nature of the facility.

In addition, within six months of obtaining operating authorization, the applicant must submit an environmental management plan and a safety management system to the ARH for approval. If an installation or facility is permanently shut down, the operator is required to develop a program for site abandonment and restoration, which must be submitted to the ARH and the Hydrocarbon Commission.

HEALTH AND SAFETY

Oil and gas rights holders are subject to health and safety requirements outlined in the regulatory framework, aimed at ensuring the well-being and safety of workers and the environment in hydrocarbon operations. These requirements encompass risk assessment, safety measures, and compliance with environmental regulations to mitigate health and safety risks.

DECOMMISSIONING

During the exploration period, Sonatrach is responsible for abandonment and site restoration under upstream concessions, while in hydrocarbons contracts, it is the responsibility of the contracting parties. For decommissioning at the end of the exploitation period, provisions are set aside annually, with Sonatrach managing the funds. Detailed regulations are outlined in Decree No 21-317 dated 14 August 2021, which includes rules for well abandonment, facility abandonment, site restoration, program establishment, and funding provisions. The ARH oversees abandonment and restoration control.

FISCAL REGIME

In Algeria's oil and gas sector, taxes include surface tax, a hydrocarbon royalty at 10%, and a hydrocarbon revenue tax with rates ranging from 10% to 50% based on project profitability. Additionally, there's a 30% income tax on income made by operators, and a 30% tax on the remuneration of foreign contractors under production-sharing contracts or risk services contracts.

A tax regime of reduced rates may be applied under specific conditions, such as complex geological situations, technical extraction difficulties, or high development and operating costs that could jeopardize project viability. These reduced rates, granted by joint order of the Minister of Finance and the Minister of Hydrocarbons, cannot fall below 5% for hydrocarbon royalty and 10-20% for hydrocarbon revenue tax, depending on the project's profitability rate.

STABILISATION RIGHTS

The Algerian investment law grants a certain number of guarantees to foreign investors, such as the intangibility of the investment law, meaning that the effects of revisions or repeals to the legal system in the future do not apply to investments made under the investment law, unless this is expressly requested by the investor.

DISPUTES

The Hydrocarbon Law allows international arbitration for disputes arising out of hydrocarbons contracts between Sonatrach and international oil companies. However, decisions taken by ALNAFT and the ARH can only be appealed before the Algerian courts.

Generally speaking, from an Algerian law perspective, the legal entities governed by public law, including the Algerian State and Algerian State entities, are authorised to have recourse to arbitration only in the context of their international economic relationships or within the framework of public procurement contracts.

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FIRM INFORMATION

Website address : **www.fbladvogados.com**
Languages spoken : **Portuguese, English**
Telephone : + 244 222 335 556 / 222 334 978 / 927 173 010
Address : Rua dos Enganos, No. 1, 7th Floor, Kinaxixi, Luanda
Contact : Neuza Melão Dias
Email : neuza.melaodias@fbladvogados.com

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

Angola has several laws, decrees, and dispatches that regulates the oil and gas sector. The following are the most relevant :

- Petroleum Activity Law No. 10/04 of November 12, 2004 and Presidential Decree 211/15 of December 2, 2015 are the main legal instrument that govern access to and conducting petroleum activities in Angola.
- Petroleum Taxation Law No. 13/04 of December 24, 2004 provides the taxation framework applicable to petroleum activities (taxes, rates, deductions).
- Petroleum Customs Law No. 11/04 of November 12, 2004 is the legal instrument covering the customs regime and incentives specifically applicable to the sector.
- Angolan Oil and Gas Foreign Exchange Law for the Oil Industry No. 2/2012 of January 13, 2012 determines a specific foreign exchange regime applicable to the payment of goods, services and capital operations related to the petroleum sector.
- Decree 38/09 of August 14, 2009 establishes the rules and procedures to be followed in oil operations (including upstream oil prospecting, research, evaluation, development and production activities), in accordance with the principles of safety, hygiene and health, based on Angolan laws, as well as the commonly accepted practices within the oil industry.
- Presidential Decree 190/12 of August 24, 2012 establishes a waste management policy that requires oil companies to ensure environmental protection in their operations by meeting zero operational discharge levels.
- Presidential Decree 91/18 of 10 April establishes the rules and procedures for abandoning wells and clearing oil and gas installations on national territory.
- Presidential Decree 49/19 of 6 February, creates the ANPG, establishes its organic statute and partially amends the Petroleum Activities Law.
- Presidential Decree 208/19 of 1 July establishes the legal regime governing the refining of crude oil, import, reception, supply, storage, transport, distribution, marketing and export of petroleum products.
- Presidential Decree 271/20 of 20 October, establishes the legal regime for local content in the oil sector.

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

The regulatory body responsible for enforcing the laws relating to the oil and gas sector and, at the same time, the National Concessionaire is theNational Agency for Petroleum, Biofuels and Natural Gas (ANPG), which integrates the state's public sector. ANPG scope of authority includes regulating, supervising and promoting the execution of petroleum activities and operations and contracting oil, gas and biofuels sectors.

The Ministry of Mineral Resources, Oil and Gas (MIREMPET) is the government body in Angola responsible for petroleum activities, focusing on policy coordination and cooperation with other entities, defining legislation and developing a strategic vision for the sector in the medium and long term.
Sonangol, E.P. is the State Oil Company, with preferential rights in the award and assignment of participating interest of up to 20 per cent in oil and gas concessions and operations and in the attribution of operatorship.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

Title to oil and gas resources belongs to the Angolan state. Under the terms of the Angolan Constitution, all natural resources existing in the soil, subsoil, territorial sea, continental shelf, exclusive economic zone and other areas of the territorial or maritime domain under the jurisdiction of the Republic of Angola are originally the property of the Angolan state. The national concessionaire (ANPG) holds the rights to Angola's mining resources.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

The rights granted for exploration and production (E&P) are oil concessions, and there are also prospecting licenses which grant the right to search for oil and gas deposits. In both cases, national or foreign companies can acquire these rights.

In the case of prospecting licenses, the requirements are proven suitability, technical and financial capacity.

In the case of oil concessions, in addition to the proof requirements, it is also necessary to be associated with ANPG, and this association can be through a commercial joint venture company, a consortium contract (in both cases, the ANPG's participation is usually greater than 50%) or through a production sharing contract.

An overview of the procedure for obtaining such exploration and production rights

In general, E&P rights are obtained through a concession decree, which requires participation in a public tender to be awarded the right to be an associate of the ANPG, alternatively, the direct negotiation regime can be used if no company has been awarded the E&P rights in the tender (in both cases, suitability, technical and financial capacity are always assessed).

The concession decree provides for the allocation of mining rights and a description of the concession area, the duration of the concession, authorization for the ANPG to form an association, identification of the associates and approval of the concession contract.

Fees and charges applicable to obtaining these rights

There are applicable fees and they are determined by the government.

Duration of the exploration and production rights?

The duration of E&P rights is defined in the respective concession decrees, and normally lasts for a maximum of 25 years. However, exceptionally and upon request of either of the Nacional Concessionaire or of the operator the duration may be prorrogated,

Are the exploration and production rights renewable? What are the renewal processes?

As a rule, they cannot be renewed, however, a request can be made to the Ministry of Petroleum to extend the deadline, stating the reasons for the extension and it will be up to the Ministry to grant or deny the request.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

Yes, the state has interests and they are held both by the ANPG (as the national concessionaire) and by Sonangol, E.P., which is the state oil company.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

Yes, Angolan law expressly lays down the principle of compulsory association, stipulating that any company wishing to carry out oil operations outside the scope of the prospecting license may only do so jointly with the national concessionaire. This association can take the form of: a commercial company, a consortium contract, a production sharing contract and a service contract with risk.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

No, the rules that apply to national companies also apply to foreign companies.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

Yes, under the Dispatch no 12/03, of 25 November, 2003, the legal regime for local content in the oil sector was published for the first time. In 2020 the local content regime was changed by Presidencial Decree no 271/20. The new regime is essentially based on preserving the national interest, integrating the Angolan business community, promoting free competition, requiring the hiring of Angolan workforce and promoting Angolan technological development. Among other obligations, the local content regime obliges oil operating companies to draw up a local content plan and submit it to the ANPG and to establish a program contract with the MIREMPET.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

Angolan law stipulates that ANPG associates can only transfer part or all of the contractual position they hold to third parties of proven suitability, technical and financial capacity, after express authorization from the MIREMPET. Authorization is not required when the transfer is between affiliates and the transferor company remains jointly and severally liable.

It is important to note that the ANPG has a right of priority when the proposed transfer is not to an affiliated company.

Taxes and charges may vary depending on the nature of the transaction, The applicable taxes will include oil income tax whose rate varies, according to the nature of the agreement, between 50% and 65,75% and value added tax at legal rate of 14%.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

Yes, the rule set out in the previous answer applies both to the transfer of the contractual position and in the case of the transfer of more than 50% of the quotas or shares of the transferor company.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

The condition applicable are the submission of the transfer contracts to the ANPG for prior approval and the need for authorization from the MIREMPET.

Are rights holders allowed to create security over their exploration and production rights?

Yes, holders of E&P rights can create security interest over exploration and production rights. The government issued new regulations in 2021 regarding the registration of security interest with the Central Registry of Securities Guarantees. This regime makes it possible for holders of exploration and production rights to encumber their interest, for the purpose of financing exploration and production activities.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations?

The deadline for making the commercial discovery must be included in the respective contract, while in the case of a prospecting license, the law assigns 3 years as the maximum duration of the license.

Are there any prescribed minimum work and expenditure obligations for exploration operations?

There are no mandatory minimum work or expenditure obligations.

Are there any compulsory relinquishment requirements?

Yes, there are compulsory relinquishment plans that can be either provisional or permanent. Essentially, at least one year before the expiration of the concession title or expiry of the date of abandonment of an area included therein, a relinquishment plan must be submitted to the MIREMPET with the relevant plans for the decommissioning of wells, installations and equipment for the rehabilitation of the landscape and the continuation of petroleum operations.

What are the conditions for transitioning from exploration to development and production?

The conditions for the transition from exploration to development and production first involve the ANPG (and its associate) declaring a commercial discovery when it considers that there is an oil field that can be exploited.

This is done by drawing up a general development and production plan and submitting it to the MIREMPET within 3 or 12 months of the date of the commercial discovery, or from the date of the concession, in the case of a single-period concession for oil or gas production.

What are the conditions for commencement of production operations?

ANPG is required to submit a request to MIREMPET at least 90 days before the commencement of production. The request should include a report on the execution of the general development and production plan.

Production only begins after authorization has been given by the MIREMPET, once it has been verified that the tasks set out in the plan have been completed.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

The refining and processing of crude oil must first be licensed by the MIREMPET, with the knowledge of the Petroleum Products Regulatory Institute, in order to carry out these activities.

Among other aspects, the exercise of these activities includes: ensuring the operation, technical integrity and maintenance of refineries in conditions of safety and reliability in accordance with international quality standards, oil supply and reception operations, and efficient production, with a view to reducing environmental impact.

In order to obtain a license, the application must be substantiated and should specify the markets to be satisfied, a general description of the unit to be built, production capacity broken down by product, the amount and form of the investment, and the socio-economic impact of the refinery on local development.

What are the requirements and restrictions for the export of oil and gas produced in jurisdiction? Please specify any applicable domestic supply requirements.

Export activity is also subject to a license to be given by MIREMPET.
Exportation is authorized only once the needs of the domestic market have been met, and exportation of petroleum products are not permitted whenever such activity could jeopardize the maintenance of the country's permanent reserves.

The Petroleum Activities Law establishes the possibility for the government to demanda share of production, to meet domestic consumption needs, however, the participation of the ANPG and its associates cannot exceed the proportion of Angola's overall annual oil production, nor exceed 40% of the total production of the concession area.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

The services industry in Angola has become increasingly consolidated, with the entry of new players, both national and foreign. This is the result of the reform that has been made to the sector's regulations, which has made the industry more dynamic and attractive.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

The Local Content rules are varied and are essentially aimed at preserving national interest and integrating Angolan entrepreneurs, including the establishment of an exclusivity regime for certain services that can only be carried out by Angolan individuals or commercial companies, as well as promoting national technological development.

Dispatch 127/03 of November 25th imposes a principle of protection of oil and gas services companies owned by nationals. There are three different regimes, namely:
Exclusivity regime, under which only national companies can provide the specified services.
Semi-competition regime, which entails all the activities which require reasoanable capital and superior know-how, but are not necessarily high-skilled. Here, the participation of foreign companies is allowed only if associated with a national companies.
Competition regime, which includes all and any of oil and gas services activities that do not fall under the previous regimes and reqiures high capital, and superior specialized know-how. Here the services whether , offshore oron-shore can be carried out by national or foreign companies, or joint-venture.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies?

Yes, some of these are the obligation to hire an Angolan workforce, the promotion of technological development in Angola, the contracting of goods and services supplied by Angolan companies and the drawing up of a human development plan.

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?
Depending on the activity in question, oil and gas operations are subject to the obligations to carry out public consultation, an Environmental Impact Assessment, an Environmental Impact Study and an environmental audit.

Among the authorizations, environmental licensing, environmental license, environmental operating license and environmental installation license may be required.

Are there any consequences of a breach of environmental obligations for the rights holder?

The consequences of non-compliance with these obligations can be fines or accessory sanctions, such as confiscation of machinery and equipment, closure of facilities, deprivation of the right to participate in auctions and public tenders.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

Yes, but, in principle, they became liable only whenever the company is liable and as long it is proven that they have personally failed to comply with the applicable laws and regulations and the breach is directly attributable to them. In environmental matters, if there is a violation of environmental obligations, shareholders, management and employees can be held liable for committing acts that are harmful to the environment, such as aggression against the environment, pollution, violation of rules for the construction of devices designed to prevent accidents. Such extension of liability will be determined on a case-by-case basis.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Yes, the regulations on health and safety in petroleum operations establishes the rules and procedures aimed at ensuring that petroleum operations are carried out in accordance with the health, hygiene and safety standards laid down in national legislation and internationally accepted by the petroleum industry, through systematic management and continuous improvement.

This means that the operator must comply with a set of rules, such as: a health, hygiene and safety management system, occupational health and safety, safety in operations, installations, and equipment.

Which entity is responsible for the enforcement of health and safety regulations or obligations?

MIREMPET is responsible for supervising and auditing compliance with these rules, including visits and inspections of operators' facilities. However, there are competencies defined by law for certain entities, such as the Ministry of Health or the entity responsible for safety at work, the General Labor Inspectorate (IGT). Within this area, the IGT is particularly important, being entrusted with functions such as inspecting safety, hygiene and health conditions in establishments, equipment, products and manufacturing processes, as well as assessing and certifying machinery and equipment used for occupational safety, hygiene and health activities.

Are there any consequences of a breach of these requirements for the rights holder?

Yes, the consequences can vary from the obligation to repair the damage, compensate the affected employees, permanent termination of the contract and fines.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

As a general rule, liability is only attributed to the operating company, but there may be cases where there is willful misconduct, negligence or fault on the part of related persons, who may also be held liable.

DECOMMISSIONING

What are the decommissioning and abandonments requirements and obligations for oil and gas rights holders in your jurisdiction?

The requirements include the preparation of a plan by the ANPG and its associates which provides for the abandonment of wells, installations, equipment, landscape restoration and the continuation of oil operations, and the submission of this plan to the MIREMPET.

The plan must provide the MIREMPET with sufficient information to assess the future fate of the facilities in terms of technical, financial, safety and environmental aspects.

Are there any particular events or timelines that trigger decommissioning obligations?
Yes, the obligation referred to above has a term of one year, until the end of the concession or the date of abandonment.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

The following taxes are levied: oil production tax (IPP) at the legal rate of 20% that can be reduced to 10% when oil exploration occurs in mineral deposits, in maritime areas with a water column greater than 750 meters or in difficult-to-access land areas previously defined by the government, oil income tax (IRP) at legal rate of 65,75% whenever the National Concessionaire isn't part of business and for contracts of risk and at the legal rate of 50% in the share production agreements, oil transaction tax (ITP) at the legal rate of 70%, after deduction of deductible costs and expenses.
In addition to these taxes, a surface tax (levied on the concession area or development areas) calculated with a fixed rate of USD 300,00 per Km2 and a contribution to the training of Angolan executives may also be levied.

Are there any tax incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

There are no tax exemptions in Angolan legislation on the taxation of oil activities.
Regarding incentives, the law on the taxation of oil activities provides for an investment premium for investment expenses. For example, in the second half of 2023, the National Assembly authorized the President of the Republic to legislate on tax incentives in certain oil blocks, due to their "increased operational complexity", and because there was "a need to award additional incentives, to enable the drilling of exploration wells and, in the event of a discovery, to proceed to the development phase".

The law also provides the possibility of the government, at the request of Ministry of Finance (MINFIN) and MIREMPET, approving the award of investment premiums.

We are unable to confirm if these incentives are routinely granted.

What is the procedure for obtaining any applicable incentives and exemptions?

The following considerations will impact the application for the grant of incentives: (i) the economics of the contract and (ii) the geological potential of the concession. An application for incentives is made to the ANPGB, which will be responsible for proposing such incentives to MINFIN and MIREMPET if approved.

STABILISATION RIGHTS

Are there any forms of stabilisation rights granted to investors in the oil and gas sector?

Angolan legislation does not explicitly provide for stabilization rights nor do concession contracts provide for stabilization.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

No.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

As indicated, specific stabilisation agreements are not entered in Angola for petroleum operations.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

As indicated, specific stabilisation agreements are not entered in Angola for petroleum operations.

DISPUTES

Are there any statutorily prescribed procedures for the resolution of disputes?

Yes, Angolan law expressly provides that any disputes that may arise between the MIREMPET and licensees or between the ANPG and associates over contractual matters must be resolved by consensus, in accordance with the principles of good faith, and if they are unsuccessful, recourse must be had to arbitration.

The arbitral tribunal must operate in Angola, applying Angolan law and the language must be Portuguese.

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

Answered above.

CAMEROON
D. MOUKOURI AND PARTNERS

FIRM INFORMATION

Website address : **https://moukourilaw.com/**
Languages spoken : **English, French**
Telephone : +237 233 422 544/233 082 334
Address : 357, Rue Toyota, Bonapriso, Douala-Cameroon
Contact : Danielle Moukouri
Email : d.moukouri@moukourilaw.com

CAMEROON | D. MOUKOURI AND PARTNERS

RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

The following laws regulate the oil and gas sector in Cameroon:

- Regulation N° 02/18/CEMAC/UMAC/CM of 21 December 2018 regulating Foreign Exchange in CEMAC;
- Law N° 2019/008 of 25 April 2019 on the Petroleum Code;
- Law N° 2012/006 of 19 April 2012 Instituting the Cameroon Gas Code;
- Law N ° 2011/025 of 14 December 2011 on the Development of Associated Gas;
- Law N ° 96/12 of 05 August 1996 relating to environmental management;
- The Cameroon General Tax Code 2023;
- Decree N° 2023/232 of 04 May 2023 setting the terms and conditions for the application of Law N° 2019/008 of 25 April 2019 on the Petroleum Code;
- Decree N° 2014/3438/PM of 27 October 2014 laying down the modalities for the application of Law N° 2012/006 on the gas code;
- Decree N° 2013/1205/PM of 18 March 2013 laying down the modalities for the application of the law on the development of associated gas;
- Decree N° 2013/0171/PM of 14 February 2013 setting out the procedures for carrying out environmental and social impact assessments; and
- Order N° 0069/MINEP of 08 March 2005 establishing the various categories of operations requiring environmental impact assessments.

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

The Ministry of Mines, Industry and Technological Development (MINMIDT):
MINMIDT is responsible for defining, guiding, coordinating, and monitoring government policies in the fields of mines, industry and technological development. It is also responsible for granting authorizations for prospecting, research, exploitation, transport and storage of hydrocarbons, as well as supervising oil contracts.

The National Hydrocarbons Corporation (SNH):
It is a State-owned enterprise whose main mission is to manage the State's interest in the oil and gas sector, in particular by promoting, prospecting, researching, exploiting, transporting, storing, processing and marketing hydrocarbons and their derivatives. It is also responsible for implementing the policy of exploiting associated gases and developing the gas sector.

The Hydrocarbons Prices Stabilization Fund (CSPH):
Its main mission is to regulate the price of hydrocarbon products nationwide, through partial or total support of the said products price increases, and according to its financial resources. It participates in all operations aimed at controlling national energy policy through equity participation in the exploration, production, refining and distribution of oil products.

CSPH ensures the regular supply of hydrocarbons products nationwide through regulation of stocks and prices. It also provides arbitration needed to maintain a healthy competition between operators in the sector. It also supports the protection of consumer through two mechanisms: stabilization and equalization.

The National Refining Company (SONARA) refines crude oil and supplies refined petroleum products such as butane, premium petrol, jet fuel, paraffin, diesel, distillate and heating oil.

The Ministry of Finance (MINFI), through its various departments, is responsible for collecting tax revenues from the extractive sector on behalf of the State and decentralized administrative units.

The Ministry of the Environment and the Protection of Nature regarding the provision of various environmental permits and the monitoring of the implementation of environmental obligations. It is also involved in environmental impact studies that are carried out by petroleum operators.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

All deposits or natural accumulations of hydrocarbons located within the soil or subsoil of the territory of Cameroon, whether or not discovered, are the exclusive property of the State of Cameroon.

For the purposes of petroleum operations, the State exercises sovereign rights over the entire territory of Cameroon. The Minister in charge of hydrocarbons represents the State for all petroleum contracts and authorisations.
A natural or legal person, including the owners of the land, may only undertake petroleum operations if it has been previously authorized by the State.

Natural gas discovered within the national territory shall be developed following a gas resource development plan prepared and updated by the State or a public body duly authorized for that purpose.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

Any natural person of Cameroonian or foreign nationality resident in the Republic of Cameroon or any legal person governed by Cameroonian private or public law, without discrimination, may carry out, within the national territory, an activity in the oil and gas sector in accordance with the laws and regulations in force.

Natural or legal persons, including landowners may carry out petroleum operations only after obtaining prior authorization from the State.

The rights granted by the State to undertake exploration and production operations include the following:
Prospecting authorizations:

They apply to areas not covered by a petroleum contract. They shall be granted to natural or legal persons by decision of the Minister in charge of hydrocarbons laying down the conditions, after the technical opinion of the National Hydrocarbons Corporation (SNH) duly mandated to that effect. It shall also confer on their holders the non-exclusive right to carry out preliminary prospecting within a specified area. They shall not constitute hydrocarbon mining titles and shall not be transferable or assignable.

Exploration authorizations:

They are attached to petroleum contracts, and shall be either hydrocarbon exploration permits, in the case of concession contracts, or exclusive exploration authorizations, in the case of production sharing contracts or risk service contracts.

Exploration authorizations shall confer on their holders the exclusive right to carry out, at their risk and expense. hydrocarbon prospecting and exploration within the limits of the relevant area, except as may be otherwise provided for in the petroleum contract. It also confers on their holders the right to dispose of their share of hydrocarbons that could be extracted during exploration and production tests, subject to prior approval by the Minister in charge of hydrocarbons.

Exploitation authorization:

Attached to a petroleum contract, it shall be either an exploitation concession, in the case of a concession contract, or an exclusive exploitation authorization, in the case of a production sharing contract or a risk service contract.
It shall confer on its holder the exclusive right to carry out, at the holder's risk and expense, all petroleum operations within the limits of the relevant area, as well as the right to dispose of all or part of the hydrocarbon production, in accordance with the terms of the petroleum contract.

Domestic Transportation Authorization:

Holders of an exploitation authorization shall at their request, be granted a domestic transportation authorization by decree of the President of the Republic, under the conditions provided by the law.

Prospecting authorizations

The prospecting authorization application addressed to the Minister in charge of hydrocarbons shall be filed by the applicant with the SNH) with the relevant documents, against acknowledgement of receipt. The Minister in charge of hydrocarbons shall rule on the prospecting authorization application within a period of 3 months, with effect from the date of receipt of the application. The prospecting authorization shall be granted, by order of the Minister in charge of hydrocarbons, for a period of 2 years, renewable once for a maximum period of 1 year. The Minister in charge of hydrocarbons shall notify the applicant within 15 days of the date of signature of the order.

Exploration authorizations:

The application for an exploration authorization shall be addressed to the Minister in charge of hydrocarbons. A copy, together with all the documents, shall be sent to the SNH. The application shall be entered into the Special Hydrocarbons Register and a receipt issued to the applicant.

The Minister in charge of hydrocarbons shall, on the favourable opinion of the SNH, decide on the application for renewal within a period of no more than 3 months from the notification to the applicant, of the admissibility of the application. He shall notify the applicant thereof.

At the behest of the Minister in charge of hydrocarbons, the application for exploration authorization shall be forwarded to the Prime Minister for continuation of the procedure. Exploration authorization shall be granted by decree of the President of the Republic, for a maximum initial duration of 3 years or 5 years for special petroleum operations zones. The applicant company shall receive notification from the Minister in charge of hydrocarbons within 15 days following the date of signature of the decree. The exploration authorization shall be renewable twice for a maximum duration of 2 years per renewal period, in accordance with the provisions of Articles 32 (1), (2) and (3) of the Petroleum Code.

Exploitation authorization:

The holder of an exploration authorization shall submit an application for exploitation authorization to the Minister in charge of hydrocarbons, with an original copy to the SNH It shall be accompanied by the mandatory information and documents. The Minister in charge of hydrocarbons, with the consent of the SNH shall decide on the application for exploitation authorization within 6 months of the date of notification to the applicant of the acceptance of the application. He shall notify the applicant thereof. The application for exploitation authorization shall be handed to the Prime Minister, for further procedures, at the behest of the Minister in charge of hydrocarbons.

The exploitation authorization shall be granted by decree of the President of the Republic, for a maximum period of 25 years for liquid hydrocarbons and 35 years for gaseous hydrocarbons. The Minister in charge of hydrocarbons shall notify the applicant company within 15 days of the date of signature of the decree.

Are there any fees and charges applicable to obtaining these rights?

Applications for grant, renewal, relinquishment or assignment of petroleum contracts and the Authorizations deriving therefrom shall be liable to the payment of flat rate fee, the amounts and payment conditions of which shall be laid down by the applicable finance law. The same principle shall apply to the grant or renewal of prospecting authorizations.

What is the duration of the exploration and production rights?

Prospecting authorizations:

The prospecting authorization is granted, by order of the Minister in charge of hydrocarbons, for a period of 2 years, renewable once for a maximum period of 1 year.

Exploration authorizations:

Exploration authorization is granted by decree of the President of the Republic, for a maximum initial duration of 3 years or 5 years for special petroleum operations zones.

Exploitation authorization:

The exploitation authorization is granted by decree of the President of the Republic, for a maximum period of 25 years for liquid hydrocarbons and 35 years for gaseous hydrocarbons.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

The State, either directly or through a duly mandated public body, that is, the Ministry of Mines, Industry and Technological Development (MINMITD) and the SNH, shall reserve the right to acquire an interest under any legal form whatsoever in all or part of the petroleum operations under a petroleum contract, in accordance with the contract terms. In such a case, the agreement to materialize the interest of the State must be concluded prior to issuance of the relevant authorization.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

There are no special rules on local participation in the shareholding of petroleum companies in relation to the acquisition of exploration and production rights in Cameroon.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

There are no restrictions applicable to foreign persons seeking to acquire exploration and production rights in the petroleum or gas sector in Cameroon.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

Under the petroleum code local content is defined as all activities of the national petroleum industry relating to local capacity building, use of local human and material resources, technology transfer, use of local industrial and service companies, and the creation of measurable value added for the local economy.

The local content adopted in Petroleum Contracts must include a vocational and technical training program for Cameroonians to scale up their skills in the petroleum trades and any other aspect likely to improve local content.

Petroleum contract holders must, in case of equal competence and, as a matter of priority, recruit qualified Cameroonians in all socio-professional categories and at all positions for the conduct of their petroleum operations. Further, petroleum contract holders, are required, as a matter of priority, to award construction, insurance, goods and services, materials, equipment and products supply contracts directly or indirectly related to petroleum operations to companies under Cameroonian law that have their registered offices in Cameroon and meet internationally recognized standards.

There must be periodic assessment of the capacities of local companies that can take part in the construction, operation and maintenance of specific gas installations and a plan of development and upgrading of companies lacking such capacities.

For the purpose of local capacity building, petroleum contract holders are required to contribute between 1% and 5% of the total investments, for the initial validity period of the gas agreement.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

The rights and obligations under petroleum contracts, exploration authorizations, provisional exploitation authorizations, exploitation authorizations and domestic transportation authorizations shall be assignable in whole or in part, subject to prior approval by the Minister in charge of hydrocarbons and the signing of an amendment thereto when the said rights derive from the petroleum contract, under the terms and conditions laid down in the said contract and the regulations in force. Where the rights to be assigned were granted by a decree in the specific case of exploration authorizations, exploitation authorizations, transportation authorizations and provisional exploitation authorizations such rights shall be effectively assigned by a new decree signed by the same authority.

Any contract concluded without the prior approval of the Minister shall be null and void and shall lead to withdrawal of the authorization and or the forfeiture of the petroleum contract. A fixed fee is paid to the Treasury for applications for transfer of the rights and obligations under petroleum contracts.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

Where a transaction results in a change of control of the holder company, the said company must apply for prior approval by the Minister in charge of hydrocarbons concerning the assignment of its rights and obligations under the petroleum contract to the beneficiary of the change of control, in accordance with the terms and conditions specified by the implementing decree of this Law.

Factors amounting to the control of the holder include one or more of the following:

- protocols, agreements or contracts binding the holder to another holder or a third party and relating to the execution of petroleum operations or the management of the entity or entities that constitute the holder, the sharing of expenses and profits, the sharing and sale of the proceeds of petroleum operations or, in the event of compulsory liquidation, the distribution of assets;
- clauses of the holder's articles of association relating to head office, rights attaching to securities and the majority required for general meetings;
- a list of the names and nationalities of the legal or natural persons that hold at least ten percent (10%) of the holder's capital;
- name, nationality and country of residence of the legal entities which have debts of an amount exceeding twenty percent (20%) of the market value of the securities held by the holder's shareholders, as well as the nature and conditions of the loans contracted with such entities, where the holder's debts coming to maturity beyond four (4) years, exceed the market value of the shareholders' securities.

Where a holder of a petroleum contract is involved in a transaction likely to result in a change in the control of the holder company by its shareholders, it shall send a request to the Minister in charge of hydrocarbons to seek his prior approval.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

Assignment/transfer of rights

To render the transfer of rights and obligations effective, an amendment to the petroleum contract shall be concluded and signed by the State, the holder and the beneficiary of the transfer. Where the rights transferred were granted by virtue of a decree of the President of the Republic in the specific case of exploration, exploitation, transportation or provisional exploitation authorizations, the effective transfer of such rights shall be materialized by a new decree signed by the same authority.

Change of control

The request for prior approval of the change of control of the incumbent company must be addressed to the Minister in charge of hydrocarbons, with an original copy to the SNH. It shall include the following information and documents:

- The name or corporate name, legal form, head office, address and nationality of the company taking control of the holder;
- The updated articles of association, the deed of incorporation, proof of legal existence or an extract from the Trade and Personal Property Credit Register less than three months old, amount and composition of the capital of the company taking control of the holder, as well as its last 3 balance sheets and annual reports certified by an approved chartered accountant;
- All other details relating to the execution of the legal, regulatory or contractual obligations of the holder that the Minister in charge of hydrocarbons shall deem necessary and useful.

Are rights holders allowed to create security over their exploration and production rights?

Security can be created over petroleum contracts, exploration and production with the prior approval by the Minister in charge of Hydrocarbons.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations?

Exploration authorization shall be granted by decree of the President of the Republic, for a maximum initial duration of 3 years or 5 years for special petroleum operations zones. The applicant company shall receive notification from the Minister in charge of hydrocarbons within fiftee15 days following the date of signature of the decree. The decree shall determine the duration of the exploration authorization as well as the conditions prescribed by Articles 30 to 38 of the Petroleum Code.

The duration of the exploration authorization and that of the two (2) renewals may not exceed 7 years, or 9 years for special petroleum operations zones.

Are there any prescribed minimum work and expenditure obligations for exploration operations?

There exist a minimum exploration and expenditure program provided for in the exploration authorization and stipulated in the petroleum contract.

During application for the exploration authorization, the applicant shall submit a bank or parent company guarantee intended to cover the performance of the minimum exploration work and expenditure program.

Are there any compulsory relinquishment requirements?

The holder of an exploration authorization may relinquish all or part of its rights over the surface areas covered by its authorization, provided that a two-month notice is given to the Minister in charge of hydrocarbons. The time period shall be one year notice period for exploitation and transportation authorizations.

Except otherwise provided for in the petroleum contract, partial relinquishment shall not reduce the holder' s contractual obligations. The waiver request whether total or partial shall comprise the following information and documents:

- the evaluation of the exploration and exploitation work undertaken at the request submission date;
- the state of the holder's commitments and obligations already fulfilled, as well as those yet to be fulfilled;
- technical or other justifications for the waiver;
- supporting documents establishing that the holder has fulfilled all the obligations prescribed by the Petroleum Contract and by the regulations in force, in particular with regard to environmental protection, abandonment of oil fields and wells, sites restoration, protection of persons, and property, as well as labour law and social security;
- a receipt attesting payment to the Treasury of fixed duties applicable to the waiver request.

What are the conditions for transitioning from exploration to development and production?

Any exploration authorization holder who provides evidence of the existence of a commercially exploitable hydrocarbon deposit in the area covered by the authorization shall have the right to request for an exploitation authorization and be bound to carry out exploitation activities within 3 years with effect from the date of grant of exploitation authorization.

During the period of validity of an exploration authorization, the holder may apply for a provisional exploitation authorization which shall be granted by decree of the President of the Republic. However, the grant of a provisional exploitation authorization shall allow the exploration authorization to subsist but shall not prolong its validity period.

Only the holder of a valid exploration authorization may be granted an exploitation authorization within the area covered by the exploration authorization.

What are the conditions for commencement of production operations?

Holders of exploration authorizations must during applying for an exploitation authorization provide the following information and documents:

A development and production plan for the deposit(s) concerned and the corresponding budget, as well as the method of financing the envisaged development. This plan shall include, notably:

- a detailed estimate of operating costs;
- the drilling programme, the number and type of wells and their locations;
- the projected production profile for the duration of the proposed development;
- the associated natural gas recovery plan, where liquid hydrocarbons are produced;
- the development plan and timetable for the field(s) concerned;
- the safety measures required during the execution of petroleum operations;
- the possible development scenarios considered by the holder;
- the planned arrangements for abandonment of the field(s), surface equipment and related facilities;
- the environmental and social compliance certificate and/or the environmental and social study report, together with the environmental and social management plan.

Added to the above, they shall fulfill the following conditions:

- ensure that all materials, supplies, installations and equipment used by itself or its subcontractors in petroleum operations are in compliance with the generally accepted standards in the international petroleum industry and are in good working order;
- use the available resources in the best possible way on the contracted area such as water, sand, gravel and timber, while avoiding any waste of geological resources;

- take every measure to avoid any damage to the site under exploitation;
- ensure that the hydrocarbons discovered neither escape nor are wasted;
- avoid damaging hydrocarbon or aquifer resources bearing strata adjacent to productive strata and prevent water from entering the hydrocarbons-bearing strata, save for water needed for injection methods for assisted retrieval or for any other reason in keeping with standards and practices generally accepted in the international oil industry;
- check the exploitation reservoir during exploitation in keeping with the standards practice. The holder shall measure or determine on a regular basis the pressure and fluid flow characteristics;
- stock hydrocarbon products, in compliance with international standards practices for the oil industry;
- set up a flow system for hydrocarbons used for oil operations and brackish water;
- deposit the rubbish and waste in the catchment constructed to that effect and sufficiently distant from any reservoir, well or storage installation and dispose of the said waste in compliance with the standards and practices generally accepted in the international oil industry:
- ensure that sub-contractors in their respective sectors, are in compliance with the standards and practices generally accepted in the international oil industry as well as the rules and regulations in force in the Republic of Cameroon;
- ensure optimal use of local human resources, the training and promotion of such resources as well as optimal use of local service providers.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

For processing of oil and gas, a processing licence will need to be obtained from the MINMITD., This gives the holder of the licence the right to undertake gas processing activities in accordance with the provisions stipulated in the licence.
The refining of oil and gas produced in Cameroon is the exclusive prerogative of National Refining Company (SONARA).

What are the requirements and restrictions for the export of oil and gas produced in jurisdiction? Please specify any applicable domestic supply requirements.

No specific restrictions exist for the export of oil and gas produced in Cameroon.
However, every exporter of gas must obtain a License from the Minister in charge of downstream gas sector. The exporter shall conduct his operations in transparent and non-discriminatory conditions. The exporter shall respect the terms and the conditions contained in the specification sheet.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

The upstream petroleum sector in Cameroon can be considered a viable and competitive industry courtesy of International Oil Companies such as Perenco and Addax Petroleum which has triggered a growth in exploration and production activities. However, there are more foreign owned service companies than local companies. This may be due the lack of financial and technological capacity on the part of national companies.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

There are no entry requirements for oil and gas service companies. However, to ensure the active participation of national companies in upstream petroleum sector, the State has obligated holders of a petroleum contracts to give priority allocations to subcontractors which are companies under Cameroonian law and at least 50% of whose shares are held by Cameroonian nationals.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies?

The local content adopted in petroleum contracts shall include:

- A vocational and technical training program for Cameroonians to upscale their skills and the implementation of any required training (Section 87 of the petroleum code)
- Exploitation operators shall recruit qualified Cameroonians in all levels of petroleum operations (Article 88 of the 2019 petroleum code).
- As a priority rule, petroleum contract holders and their sub-contractors award construction, insurance, goods and services, materials, equipment and products supply contracts directly or indirectly related to petroleum operations to companies under Cameroonian law that have their registered offices in
- Cameroon and which meet recognized international standards for operations The local content component must specify the benefit of gas projects to Cameroon's economy, social, industrial and technological development.

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?

The holder of a gas authorization shall be bound to comply with the environmental
and safety laws and regulations in force, as well as with

internationally accepted environmental protection and safety standards.

Petroleum contract holders shall, at their own expense, carry out an environmental and social impact assessment in accordance with the environmental protection laws and regulation in force. They shall carry out petroleum operations in such a manner as to ensure, under all circumstances, the conservation of natural resources. in particular hydrocarbon deposits, and due protection of essential features of the environment. In this respect, holders shall take all the necessary measures to preserve the safety of person and property, and protect the environment, natural surroundings, and ecosystems.

Are there any consequences of a breach of environmental obligations for the rights holder?

Non-compliance with environmental rules shall attract a penalty of 200 ,000, 000 Francs CFA.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

The liability of an environmental breach is only limited to the exploitation operators and contract holders.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Holders of petroleum contracts and their sub-contractors shall comply with the relevant hygiene and safety standards during petroleum operations, in accordance with the legislative and regulatory provisions in force and the current international petroleum industry best practices.
They shall, within 48 hours, inform the competent administrative authorities about any serious accident during the conduct of petroleum operations.

Which entity is responsible for the enforcement of health and safety regulations or obligations?

The health and safety of employees of the private sector is safeguarded by the State through the Ministry of Labour and Social Security. This Ministry has as duty to guarantee the health and safety of employees in the oil and gas sector and to ensure that the holders of petroleum contracts comply with the health and safety regulations in force.

Are there any consequences of a breach of these requirements for the rights holder?

Failure to comply with technical, safety, hygiene or environmental regulations is an offence punishable by a fine of 200,000,000Francs CFA.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

The liability of any health and safety breach is only limited to the exploitation operators.

DECOMMISSIONING

What are the decommissioning and abandonments requirements and obligations for oil and gas rights holders in your jurisdiction?

The holder of a petroleum contract shall be bound, when returning a part of the contractual perimeter or when the abandonment of a well or a deposit becomes necessary for technical or economic reasons and at the end of the petroleum contract, as the case may be:

- to remove from the returned portion or from the contract area, the equipment, installations, structures and pipelines used for petroleum operations, in accordance with the provisions of an abandonment plan and in accordance with good practice in the international petroleum industry and the standards of the International Maritime Organization in respect of offshore sites;

- to carry out site rehabilitation works on the contractual perimeter, in accordance with the standards and good practices in force in the international oil industry. To this end, the holder shall take the necessary measures to prevent damage to persons, property, and the environment.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

For Petroleum:
Holders of petroleum contracts and the companies associated with them under protocols or agreements are subject to the payment of the following taxes and fees:
- an annual surface rental fee
- flat rate fees
- monthly royalty as specified in the contract with the State
- corporate income tax of 35%
- withholding tax
- signature bonus and production bonus
- additional petroleum levy

Are there any tax incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

When justified by exceptional circumstances, the State, through the SNH, it may take all appropriate measures in order to provide the appropriate incentives to revive exploration and exploitation activities, and support hydrocarbon production throughout the national mining sector. Incentives can only be granted in exceptional circumstances:

- To encourage the onshore exploration of inaccessible mining property, or offshore exploration at depths of more than 200 meters, or difficult and high- risk exploration themes: or
- To encourage the implementation of tertiary recovery programs to increase the productivity of deposits: or
- In case of a significant drop in investments in the upstream petroleum sector

STABILISATION RIGHTS

Are there any forms of stabilisation rights granted to investors in the oil and gas sector?

The petroleum contract may provide for special regimes with regard to the stabilization of economic conditions, particularly where conditions for the execution of the said petroleum contract are aggravated by the introduction, in the Republic of Cameroon, of laws or regulations after its effective date.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

The Petroleum and Gas Codes do not set an investment threshold to qualify for a stabilization agreement.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

The government of Cameroon has demonstrated its good faith in respecting stabilization agreements by making it a compulsory clause in all petroleum and gas contracts.
Also, where there is a violation as to the stabilization agreement, the State and the holder may resort to conciliation and arbitration procedure to settle any dispute between them. Cameroonian courts shall have jurisdiction in case of failure to resolve through conciliation and arbitration.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

In Cameroon, a stabilization clause is included in all oil and gas contracts. The conditions and procedure to remedy a damage, be it actual or potential, is also included in the contract.

However, the stabilization clause cannot prevent the State from exercising its legislative sovereignty and the violation of acquired rights would simply give rise to compensation if the conditions of actual damage were established. It should be emphasized that changes to certain fundamental rights, such as human rights law or environmental law, cannot give rise to any liability on the part of the State.

DISPUTES

Are there any statutorily prescribed procedures for the resolution of disputes?

All breaches of the provisions of the Petroleum Code, of the texts adopted for its application, of the authorizations and of the petroleum contract, shall fall within the jurisdiction of the Cameroonian courts; however, the petroleum contract may include a clause providing for a conciliation and arbitration procedure with a view to settling any dispute relating to the interpretation or application of the said contract that may arise between the State and the holder.

DRC
PATHY LIONGO & ASSOCIATES

FIRM INFORMATION

Website address : **www.plaafricalaw.com**
Languages spoken
Telephone : (+ 243) 81 423 3125, Mobile: (+ 27) 713 613 484
Address : lpathy@plaafricalaw.com/ Willybashiya@cabemery.us
Contact : Mr Pathy Liongo, Mr Willy Bashiya
Email : lpathy@plaafricalaw.com/Willybashiya@cabemery.us

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

- Law no. 15/012 of August 1, 2015 on the General Hydrocarbons regime (the 'Hydrocarbons Code').
- Decree no. 16/010 of April 19, 2016 on hydrocarbon regulations (the 'implementing decree').
- Order no. 22/003 of 7 January 2022 establishing the powers of the Ministries.

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

The President of the Republic: The President passes ordinances approving the hydrocarbons laws and their amendments.

The Minister of Hydrocarbons: The Minister is the principal manager of the sector and implements national hydrocarbon legislation. The Minister is also responsible for:

1. Promoting the development of petroleum resources;
2. Establishing and managing strategic hydrocarbon stocks in collaboration with the Ministries responsible for Finance and the Economy;
3. Granting of rights and titles over hydrocarbon deposits and conservation of related titles;
4. Monitoring the implementation of agreements in collaboration with the Ministries responsible for Finance and the State portfolio;
5. Granting of import, transport, storage, marketing and supply authorisations for petroleum products;
6. Monitoring and the technical control of activities relating to prospecting, research and exploitation of petroleum resources;
7. Refining, transport and storage of petroleum products, as well as related activities; and
8. Regulates, controls and monitors hydrocarbons activities, and ensures the constitution of safety, strategic, operational and reserve stocks of hydrocarbons and petroleum products; and
9. Monitoring and control of the marketing of hydrocarbon products.
10. The division of sediment basins into petroleum blocks and recording their precise geographical coordinates and surface areas;
11. Authorizing the extension of the exploration period;
12. Approving the deposit's development and production plan;
13. Creating and defining the production block;
14. Authorizing an increase in the volume of petroleum product stocks beyond 20%;
15. Together with the Minister for Employment, ensuring that nationals have access to job opportunities in oil companies at all levels of responsibility;
16. Together with the Minister of Finance, setting the duties and taxes levied in the Hydrocarbons sector.

The Minister of Land Affairs: They are responsible for the application and dissemination of land and property legislation, notary in land and cadastral matters, the management and granting of property titles, the allotment in collaboration with the Ministry of Town and Country Planning and the Ministry of Urban Planning and Housing, as well as the granting of plots of land for development.

The Secretary General of the Hydrocarbons: They propose the draft decree subdividing the sedimentary basin into exploration blocks, and gives their opinion on the approval of the training schedule and the annual contracting plan.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

The Congolese State.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

Hydrocarbon exploration and exploitation rights are granted under a production sharing contract or a block services contract following a competitive bidding procedure. They are granted to the national company in association with one or more legal entities formed under Congolese law or foreign law which, together, form the contractor vis-à-vis the State.

Please provide an overview of the procedure for obtaining such exploration and production rights.

The right to exploration and exploitation of hydrocarbons is acquired through a tender procedure. The invitation to tender is either open or restricted. It is organized by the Ministry in charge of hydrocarbons, taking into account technical and financial criteria. The Ministry in charge of hydrocarbons pre-selects legal entities formed under Congolese or foreign law, on the basis of the criteria defined in the notice of expression of interest published in the local and international press. The notice of expression of interest includes:

i. Identification of the block concerned (name, geographical location and surface area of the block);
ii. Period for submission of bids (date, time and place of submission);
iii. Presentation of the company (articles of association, experience in the hydrocarbons sector, balance sheets and accounts for the last three financial years).

The call for tenders includes the following stages:

i. Stage 1

- Preparation of data packages and contractual terms;
- Drawing up specifications and preparing the promotional campaign;
- Publication of tender documents in the national and international press;
- Meeting or promotional conference;
- Access to data.

After this stage, the Minister responsible for hydrocarbons will set up, by decree, an ad hoc commission responsible for organizing the bidding process up to the award of hydrocarbon rights. This committee will set up a 15-member technical sub-committee to analyse and evaluate the offers. The ad hoc committee will:

- Pre-selection phase: draw up the notice of expression of interest, receive and open the bids, evaluate the offers, and draw up the evaluation report.
- Selection phase: draft the specifications, receive, and open the bids, evaluate the technical and financial bids, and write the final evaluation report.

Once the bids have been received, they will be examined in an open session. Bids that fail to meet any of the requirements of the notice of request for expressions of interest will be rejected.

ii. Stage 2

The Minister will notify the shortlisted companies. Within 5 working days of notification, the companies which were not selected companies may lodge a reasonable appeal with the Minister.

After examining the appeals, the Minister will submit the final bidding report and the results of the appeals to the Council of Ministers. After deliberation of the final report by the Council of Ministers, the Minister responsible for Hydrocarbons will notify the shortlisted companies and publish the list of shortlisted companies.

At this stage, the Minister will make the specifications available to the shortlisted and pre-qualified companies on payment of a non-refundable fee.

The Minister will organize a commission to verify the technical and financial capacity of the pre-selected and pre-qualified companies. A report will be produced at the end of the verification mission.

The Minister will validate the ad hoc committee's bid evaluation report within 15 days and submit it to the Council of Ministers for approval.

Once approved, the Minister will notify all companies and publish the names of the selected company.

Within five working days of publication, the companies which were not selected may submit a reasonable appeal to the Minister for an out-of-court settlement.

Within fifteen (15) days of notification of the selected company, the Minister will open contract negotiations with the participation of the national hydrocarbons company. Within thirty days of the end of negotiations, the parties will sign the contract.

Are there any fees and charges applicable to obtaining these rights?

Yes, there are.
The fees applicable to obtaining these rights are:

- Signature Bonus Fiscal Zone A: 5.000.000 USD
- Signature Bonus Fiscal Zone B: 4.000.000 USD
- Signature Bonus Fiscal Zone C: 3.000.000 USD
- Signature Bonus Fiscal Zone D: 2.000.000 USD
- Exploration signature bonus Fiscal zone A: 3.000.000 USD
- Exploration signature bonus Fiscal zone B: 2.500.000 USD
- Exploration signature bonus Fiscal zone C: 2.000.000 USD
- Exploration signature bonus Fiscal zone D: 1.500.000 USD
- Amendment Signature bonus: 50% of Signature bonus act

Rates of duties, taxes and fees are set in percentages or in US dollars, payable in Congolese francs at the official daily rate.

What is the duration of the exploration and production rights?

An exploration right is granted to the contractor for an initial period of three 3years from the date of entry into force of the contract. However, the initial term is (4) four years for sedimentary basins with difficult geological or access conditions.

Exploitation rights are granted for a period of no more than 20 years. This period runs from the date of the decree approving the development and production plan drawn up at the end of exploration.

Are the exploration and production rights renewable?

Yes, they are.

Exploration rights, renewable two (2) times respectively for a period of three (3) years.

Exploitation rights are renewable once for a maximum term of ten (10) years.

What are the renewal processes?

The right to exploration is renewable under the following conditions and procedure:

i. Before granting the renewal, the Minister responsible for

Hydrocarbons ensures the execution by the contractor of the minimum work program as well as the presentation of a new work program for the new exploration period.
At each renewal, the contractor returns to the State at least half of the area previously covered by a Return which covers the right of exploration.
ii. Six months before the expiry of the exploration right, the contractor submits the renewal application to the Minister, with a copy to the Secretary General of the Ministry of Hydrocarbons;
iii. Three months prior to the expiry of the exploration right, the contractor submits a detailed technical report setting out the reasons for its request;
iv. The contractor submits to the Minister the delimitation of the area of the block returned to the State and the area to be covered by the renewed exploration right, and the Minister issues an order modifying the area of the block open to exploration, which is registered and notified to the applicant;
v. The Minister communicates the renewal application file to the Council of Ministers and issues the relevant order;
vi. And the contractor pays the renewal bonus.

The exploitation right is renewable according to the following conditions and procedure:

i. On expiry of the exploitation right, the holder may obtain renewal, provided that it has fulfilled all its contractual obligations and submitted a new development and production plan for the new period, together with an estimate of the remaining reserves. This right to renewal becomes effective and may be exercised from the day that is two years before the expiry of the exploitation right.
ii. To obtain the renewal of its operating rights, the holder notifies the Minister of its intention to do so, informing the Secretary General of Hydrocarbons two years before the expiry of the said rights; and within the same period, it begins negotiations on the new contract on the basis of the new development and production plan.
iii. The signing of the new contract takes place after approval of the new development and production plan by the Minister, on the advice of the Council of Ministers, and the contract comes into force following its approval by Presidential Order.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

Yes. The State participates in hydrocarbon activities through a national company. This company is involved in upstream and downstream hydrocarbon activities, either directly or indirectly in association with a Congolese or foreign legal entity.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

With the exception of the rights provided to the national oil company, there is no additional local participation requirements for Congolese nationals. The national oil company can associate with private companies and the minimum thresholds of local participation for the national oil company is 20%.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

Yes. The foreign legal entity is required to set up a Congolese company to carry out exploration and production activities. It must first provide proof of technical and financial capacity to the Minister responsible for hydrocarbons, and during the execution of the work program.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

Yes, including:

- Developing national skills and transferring technology to nationals;
- Professional promotion of nationals and local expertise;
- Developing local businesses;
- The State takes the necessary measures to encourage the participation of nationals in hydrocarbon activities;
- Employment of nationals favoured over foreigners for equal skills ;
- Priority is given to local companies when subcontracting on equal technical and commercial terms; and
- The Government defines and implements employment and training policy for nationals in the hydrocarbons sector.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

Exploration and exploitation rights are transferable, in whole or in part, subject to the prior approval of the Minister responsible for hydrocarbons. In this case, an environmental audit is initiated thirty (30) days prior to approval of the transfer. The audit determines the environmental responsibilities and obligations of the transferor during the period in which it held the hydrocarbon rights. Approval may be refused in the event of non-compliance with the minimum works program and related budgets in force at the time of transfer.

In the event of a transfer, the purchaser must provide proof of technical and financial capacity to the Minister responsible for hydrocarbons. Where the transfer or partial or total transfer is to an affiliated company, the contractor guarantees the transferee's performance of its obligations. The national company has a right of first refusal in the event of a partial or total sale to a non-affiliated company within 30 days of the request for approval.

The fee for the transfer of exploration rights is fixed in the contract. The fee for the transfer of exploitation rights is set at a minimum of USD 10,000,000. A tax on the sale of interests is levied when the sale generates a capital gain. The rate applied is 40% in the exploration phase and 30% in the operating phase.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

Yes, the Minister in charge of hydrocarbons must be informed beforehand.

The change of control generally relates to the transfer of assets which is subject to the approval of the minister in charge of hydrocarbons.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

Conditions include:

i. Sending a request to the Minister in charge of hydrocarbons containing the following information:
   - The name or company designation of the transferee;
   - The address or nationality of the assignee;
   - Written undertaking by the assignee to assume all contractual obligations; and
   - Proof of payment of financial obligations arising from hydrocarbon law.

ii. Carrying out an environmental audit of the exploration or operating site concerned by the transfer thirty days before the transfer is approved.

iii. Complying with the minimum works program and related budgets in force at the time of transfer.

iv. To have satisfied the technical and financial requirements as stipulated by law prior to any transfer.

Are rights holders allowed to create security over their exploration and production rights?

Yes, they are authorized, subject to approval from the ministry in charge of hydrocarbons. This approval is made through a request addressed to the minister in charge of hydrocarbons.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations?

Yes, the duration for exploration operations varies from 3 to 4 years depending on the case, with the possibility of a 6-month extension.

Are there any prescribed minimum work and expenditure obligations for exploration operations?

Yes, the holder of the exploration right is obliged to pay the bonus related to its activities. They are also required to carry out the minimum work program and related budgets stipulated in the hydrocarbon contract. If the exploration company fails to meet its obligations at the end of each period of validity, the government may refuse to renew the exploration period, or may initiate proceedings to terminate the contract and demand payment of compensation.

Are there any compulsory relinquishment requirements?

At the time of renewal, the contractor is required to relinquish a portion of the contract area to the State as a condition for progressing with a renewal application.

What are the conditions for transitioning from exploration to development and production?

Conditions for the transition from exploration to development and production include the discovery of a marketable hydrocarbon deposit and approval of the development and production plan.

What are the conditions for commencement of production operations?

The following conditions apply to the commencement of production operations:

i. Approval of the development and production plan by the Minister responsible for hydrocarbons;

ii. Commencement of operations within 12 months of approval of the aforementioned plan;

iii. Compliance with environmental requirements and production optimization when carrying out production operations on the developed deposit.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

The requirements and restrictions applicable to the processing and refining of hydrocarbons include:

i. Hydrocarbon refining and processing activities are subject to prior authorization by the Minister for hydrocarbons, after approval and presentation of an environmental impact study;
ii. The signing of a refining contract between the Government, in return for payment of a remuneration tax of USD 300,000;
iii. Priority supply of refined hydrocarbons in the national territory;
iv. Taking charge of the training of agents and executives of the Ministry of hydrocarbons;
v. Contributing to the constitution of the strategic stock; and
vi. Participation in social initiatives to help local communities and those living near the site.

What are the requirements and restrictions for the export of oil and gas produced in jurisdiction? Please specify any applicable domestic supply requirements.

i. The export of oil and gas produced in the DRC is subject to prior authorization by the Ministry of hydrocarbons, after consultation with the Hydrocarbons Technical Committee. The application must include details relating to the market profile, the selling price and the identity of the buyer.
ii. Holders of oil and gas rights must comply with export quotas set by the government, as well as foreign exchange and currency repatriation rules.
iii. Compliance with international conventions to which the DRC is a party, particularly in terms of transparency, anti-corruption and environmental protection.
iv. Submit to control and inspection measures.

Please specify any applicable domestic supply requirements.

There is no domestic supply requirement for contractors under the law, production sharing contracts or block services contracts in respect of hydrocarbons extracted from the DRC. However, the government may impose a domestic supply requirement when the need arises.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

Yes, there are a number of service companies operating in the oil sector and working with oil companies at all levels of activity. These industries submit bids by tender or by mutual agreement, under the supervision of the Autorité de Régulation de la sous-traitance dans le Secteur Privé (ARSP).

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

Service companies awarded subcontracts must be Congolese-owned, i.e. promoted by Congolese people. They must meet the following criteria:

1. The head office is located in the Democratic Republic of Congo;
2. The majority of share capital is held by individuals or legal entities of Congolese nationality;
3. The majority of management bodies are administered by Congolese individuals;
4. The staff is essentially made up of natural persons of Congolese nationality.

Also, they must comply with the following conditions to operate in the Democratic Republic of Congo :

1. have a Trade and Personal Property Credit Register, a national identification and a tax number;
2. produce a document proving that they are in good standing with the tax authorities;
3. provide proof of membership of a social security organization.

Apart from that, they shall hold a licence issued by the ministry responsible for hydrocarbons.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies?

Yes, according to Law no. 15-012 of August 1, 2015, there are mandatory local content requirements for oil and gas service companies in the DRC. This law provides for several measures to promote local content, such as:

i. Presenting a local content plan to the national local content monitoring committee for approval;
ii. Preference is given to national companies for the supply of goods and services required for hydrocarbon activities, provided that they offer equivalent conditions in terms of quality, price and lead time;
iii. Priority recruitment and training of qualified Congolese personnel;
iv. Contribution to local development in areas where hydrocarbon activities are located, in particular by financing social projects.

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?

Under the Hydrocarbons Code, hydrocarbon operations are subject to compliance with environmental obligations, including:

i. The completion of an environmental and social impact assessment (ESIA), accompanied by an environmental and social management plan (article 21 of the Environmental Code);
ii. Holding a public inquiry;
iii. Authorization duly attested by a national or provincial operating permit;
iv. The environmental and social impact study is submitted to the Minister for the Environment and Sustainable Development for approval;
v. Payment of an establishment tax, an annual remuneration tax and a pollution tax. The environmental fee, calculated according to production volume and type of hydrocarbon.

Are there any consequences of a breach of environmental obligations for the rights holder?

Yes, there are consequences for the holder of oil and gas rights in the event of a breach of environmental obligations, in accordance with Law no. 11/009 of July 09, 2011 on fundamental principles relating to environmental protection, namely:

i. The payment, by any person who carries out or contributes to carrying out a project or activity without an ESIA, of a fine equal to five times the costs that should have been disbursed for the assessment and validation of the study.
ii. The payment of a fine equal to double the costs incurred for the assessment and validation of the study in the event of the intentional provision of erroneous or inaccurate information in an ESIA.
iii. Payment of a fine of between nine million and forty-five million Congolese francs for any operation of a classified facility that does not have an emergency plan.
iv. Penal servitude of (5) five to (10) ten years and a fine of one hundred million to two hundred and fifty million Congolese francs, or one of these penalties only, for all imports of hazardous or radioactive waste into the national territory. (Article 72 and following of the Environmental Protection Act)

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

The liability of the rights holder in the event of failure to comply with environmental obligations may extend to its shareholders, directors, managers and employees, only if it is demonstrated that there is a direct connection between them, the fault (having caused the damage) and the author of this fault.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Yes, there are health and safety requirements for oil and gas rights holders in the DRC according to Law no. 15-012 of August 1, 2015. Below are a few examples:

i. The delimitation in the area covered by the exploitation rights of a zone closed to third parties for safety reasons and at the contractor's request.
ii. An area may be declared off-limits to hydrocarbon activities in the public interest (national defense, public safety, the economy, and the incompatibility of such activities with environmental protection).
iii. Compliance with measures prescribed by the Minister of hydrocarbons to prevent or eliminate the causes of danger inherent in activities affecting public health and safety, conservation of deposits, water sources, public roads and the environment.
iv. Notify the Minister in charge of hydrocarbons and the local administrative and judicial authorities of any serious or fatal accident occurring during hydrocarbon operations.
v. The transmission to the Minister, with a copy to the administration, of environmental, safety and health management instruments, in particular:
    - An environmental management plan and regular updates;
    - An onboard emergency plan;
    - A forward operating plan;
    - A land use plan, etc ;
vi. In terms of safety, oil operations require the assurance of better collective and individual protection conditions for personnel, in order to achieve, maintain and develop a high level of safety in line with technological advances.
vii. Provision, use and maintenance of appropriate safety and fire-fighting equipment and materials.
viii. Ensure that workers on site enjoy hygienic and sanitary conditions and take rigorous measures to prevent occupational diseases and other illnesses specific to the oil industry.
ix. Produce an occupational risk assessment document for submission to the French authorities.

Which entity is responsible for the enforcement of health and safety regulations or obligations?

Several entities are responsible for enforcing health and safety regulations and obligations, including the Ministries responsible for Hydrocarbons, the Environment, Public Health, Labor and Social Security, and Regional Planning. These ministries may, as appropriate, jointly draw up standards and other imperative measures for the protection of the environment, hygiene, health, safety and space allocation, applicable to hydrocarbon activities. (Article 363 of the Hydrocarbons Regulation Decree)

Are there any consequences of a breach of these requirements for the rights holder?

In the event of a breach of these requirements, the holder is liable to payment of fines equivalent to the value of the obligation not fulfilled.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

Penalties for breaches of the requirements do not extend to shareholders, directors, officers and employees. They are limited to the company.

DECOMMISSIONING

What are the decommissioning and abandonments requirements and obligations for oil and gas rights holders in your jurisdiction?

The procedure for abandoning an exploitation block is the same as for abandoning an exploration block. The right-holder draws up an abandonment plan 6 months in advance and sends it to the Minister in charge of hydrocarbons for approval. The contractor is responsible for restoring the site to its original condition, and for carrying out abandonment operations:

- Identify the most appropriate environment;
- Consulting the local population;
- Comparison of the initial site environment with the estimated environment at the end of exploration and/or production work;
- The site abandonment plan, including an estimate of the cost of abandonment work.

Upstream, abandonment programs include the abandonment of wells, pipelines, production and process platforms, and all facilities brought into the contract area by the contractor. They also include the removal of all explosive charges and site rehabilitation.

In addition, the holder of an exploitation right is obliged to build up an abandonment provision throughout the exploitation period, from the production of the first barrel, by regular payment of funds into an escrow account opened with the Central Bank of Congo.

Completion of the site abandonment plan is sanctioned by the issue of an execution certificate by the Minister in charge of Hydrocarbons, following a regular assessment of the work. (Article 164 and following of the Hydrocarbons Code).

Are there any particular events or timelines that trigger decommissioning obligations?

Abandonment of an exploration block occurs when exploration is unsuccessful or inconclusive, whereas abandonment of an exploitation block occurs at the end of exploitation of the deposit, i.e. when it ceases to be exploitable for reasons of profitability or major environmental risk. As indicated above, an abandonment plan must be drawn and submitted to the Minister in charge of Hydrocarbons for approval 6 months prior to the commencement of abandonment processes.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

The contractor is subject to the following taxes, duties, and fees:

i. Royalties;
ii. The state's share of oil profits;
iii. The State's share of excess oil;
iv. Signature bonus;
v. Bonus exploration rights;
vi. Exploration rights renewal bonus;
vii. Renewal bonus;
viii. The bonus to amendment;
ix. Bonus for the first production;
x. Surface fees;
xi. Statistical tax;
xii. Payment for an administrative document;
xiii. Exceptional tax on the remuneration of expatriate staff;
xiv. Professional tax on nationals' salaries;
xv. Domestic value-added tax on local consumption during the operating phase;
xvi. Tax on any form of transfer of rights or interests in exploration and exploitation phases.

However, the contractor may benefit from certain exemptions granted by law.

Note that the blocks are divided into four (4) tax zones based on geological and environmental characteristics (A, B, C and D). Improved geological and environmental knowledge of a block can change its categorization. Each fiscal zone, for example, corresponds to a specific bonus, royalty, cost-stop and profit-oil rate **(Articles 255 and 256 of the Hydrocarbon Code Regulations).**

Are there any tax incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

Yes, except for the taxes, duties, fees and royalties listed above, all the activities of the contractor or service provider, including their subsidiaries, consultants and subcontractors, are exempt from all taxes and duties relating to companies in the DRC. These exemptions are granted at the contractor's request **(Articles 254 and 255 of the hydrocarbons code regulations).**

What is the procedure for obtaining any applicable incentives and exemptions?

At the contractor's request, the Director General of Taxes and the Directorate General of Customs and Excise issue non-taxation certificates in accordance with the procedure in force.

STABILISATION RIGHTS

Are there any forms of stabilisation rights granted to investors in the oil and gas sector?

Yes, there are forms of stabilization rights granted to investors in the oil and gas sector in the DRC. These rights are conventional in that they are provided for in the contract negotiated between the parties.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

There is no general, uniform investment threshold to qualify for a stabilization agreement in the DRC's oil and gas sector. Stabilization agreements are contractual clauses that are negotiated on a case-by-case basis between the Congolese government and oil and gas companies, depending on the characteristics of the project, the risks involved, the expected benefits, and so on. As a result, the required investment threshold may vary from contract to contract and from partner to partner.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

In general, the terms of the stabilization agreements are respected by the Congolese government

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

No, in most cases, there are no issues relating to stabilization agreements.

DISPUTES

Are there any statutorily prescribed procedures for the resolution of disputes?

Yes, according to article 182 of the Hydrocarbons Code, disputes relating to upstream hydrocarbon activities are settled out of court. If amicable settlement fails, recourse is made to international arbitration in accordance with the terms agreed between the parties in the contract. In such cases, the arbitral tribunal will apply Congolese law. **(Article 182 of the Hydrocarbons Code, 368 et seq. of the Hydrocarbons Code Regulations)**

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

Refer to the answer above.

EGYPT
MARGHANY ADVOCATES

FIRM INFORMATION

Website address : **https://www.marghany.com/**
Languages spoken : **Arabic, English**
Telephone : +20 2 2269 0794/5
Address : 5 Kamal Hassan Ali St., Suite 405, Sheraton Heliopolis, Cairo, Egypt
Contact : Amir Marghany
Email : amir@marghany.com

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

In Egypt, the laws that govern the oil and gas sector are:

- Law No. 198 of 2014 on Mineral Resources and its amendments;
- Prime Ministerial Decree No. 108 for the Year 2020 on issuing the executive regulation of the Law;
- Law No. 27 of 1981 on Employment of Mining and quarrying workers;
- The Mining and Quarries Law No. 66 of 1953, as amended by law no. 456 of 1954 and its Executive Regulations issued by Ministerial Decree No. 758 of 1972 (referred to as the Fuel Materials Law);
- the Gas Market Activities Law No. 196 of 2017 and its Executive Regulations issued by the Prime Ministerial Decree No. 239 of 2018;
- the 'Oil Pipelines Law' No. 4 of 1988 and its Executive Regulations issued by the Ministry of Petroleum Decree No. 292 of 1988;
- Law no. 202 of 2020 on Waste Management;
- the Environmental Law No. 4 of 1994 (Environmental Law) and its Executive Regulations issued by Prime Minister Decree No. 338 of 1995; and
- Article 32 of the Egyptian constitution of 2014.
- The Egyptian Companies Law no. (159) of 1981.

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

The regulatory body responsible for administering the applicable laws and regulations is the Ministry of Petroleum & Mineral Resources of Egypt (the" MoP"), it is the highest governmental authority in Egypt responsible for setting out and overseeing the general policies and regulations governing the oil and gas activities in Egypt, MoP is responsible, through its affiliated entities for regulating the production, distribution and the supply of petroleum products.

Several entities affiliated to the MoP, including the listed entities below, have been established to implement the petroleum policies:

1. The Egyptian General Petroleum Corporation (EGPC)
2. The Egyptian Natural Gas Holding Company (EGAS)
3. The Egyptian Petrochemicals Holding Company (ECHEM)
4. The South Valley Egyptian Petroleum Holding Company (GANOPE)
5. The Egyptian Mineral Resources Authority (EMRA)

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

According to Article 32 of the Egyptian Constitution, all oil and gas resources are controlled and owned by the state, accordingly, only the state can grant exploration and exploitation rights of oil and gas resources to international companies, in accordance with the relevant law.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

The right to explore and exploit oil and gas is awarded by the government under the form of a concession agreement between the successful bidding company (the Contractor), the Egyptian state represented by the MoP and EGAS/ EGPC as the case may be. The bidding company may be any domestic or foreign entity provided that they fulfil applicable financial and technical requirements.

Please provide an overview of the procedure for obtaining such exploration and production rights.

The EGAS or EGPC usually announces a bid round to all the companies (whether domestic or international) interested in exercising the exploration and exploitation activities in the Egyptian territory. The bidding companies are required to submit to the EGAS or EGPC two separate sealed envelopes. The first envelope contains the technical qualifications of the bidding company, (i.e., the previous exploration experience and activities of the company all over the world including development projects, gas or petroleum production, reserves and the latest technology used, along with the bidding company's annual report); the second envelope contains the commercial parameters based on which the bidding company, if successful, will undertake the exploration and exploitation activities. The second envelope will not be opened unless the first envelope satisfies all the requirements and the bidding entity is technically qualified; the winning bidder then commences negotiations on the draft concession agreement . The EGAS or EGPC leads negotiations on the draft concession agreement and, once they conclude negotiations with the Contractor; the draft concession agreement will be submitted to the MoP and Parliament for approval and issuance of the relevant law.

Are there any fees and charges applicable to obtaining these rights?

There are no specific fees payable by a Contractor to acquire the right to carry out exploration and exploitation activities. However, the Contractor is responsible for all costs relating to minimum exploration expenditures as determined by the concession agreement. The Contractor must issue a letter of guarantee in favour of EGPC to ensure compliance with their financial obligation and has no right to reimbursement of expenses except in the event of a commercial discovery.

What is the duration of the exploration and production rights?

Each concession is divided into two phases. The first is the exploration phase while the second is the exploitation phase.
1) Exploration Phase – when the Contractor seeks out land for the oil and gas concession agreement. The Contractor has no right to extract the material at this phase.
2) Exploitation Phase – oil and gas concession agreements are then awarded to contractors through a bidding process.

The exploration phase generally range from seven to nine years and are usually divided into one preliminary term and two extensions. If there is a commercial oil and/or gas discovery then the term may be extended to between 25 to 35 years.

Are the exploration and production rights renewable? What are the renewal processes?

Exploration rights can be renewed by a request of renewal for exploration submitted to the EGPC) two months prior to the end date of such licence. The request should include evidence of the operations conducted during the first period and the new rent amount.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

After the deduction of the royalties and the cost recovery of oil and gas, the remaining quantity of oil and gas is distributed between the Contractor and the EGAS or EGPC in accordance with the percentages stipulated under the relevant concession agreement.
The Contractor is entitled to gradually recover all the costs and expenses incurred by the Contractor with respect to the exploration, development and relevant operations under the concession agreement. Such cost recovery is around 30–40 % of the produced oil or gas.

Under Article (31) of law no. (66) of 1953 where a concession agreement is granted to exploit an area that does not exceed half of the area designated for exploration. The concessionaire shall pay, in advance, an annual lease fee of 2.5 EGP/Hectare as well as a royalty of 15% of the annual total oil production of the concession area. The article further stipulates that the annual lease fee is fully refundable in case it exceeds or equals the 15% royalty in value.
In case the concessionaire desires to exploit part/parts of the remaining half of the exploration area, they shall enter into another concession agreement and the royalty shall be increased to 25% of the annual total oil production of such part/parts.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

No, the Contractor does not need to be an Egyptian entity. No local participation requirements are set by EGPC regarding obtaining the right to explore or requesting the issuance of a concession agreement.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

There are no special rules or restrictions with regard to foreign companies that operate in the field of oil and gas.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

No

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

Any assignment of oil or gas interests to a third party (whether share or asset-based transfer) requires the prior written consent of the government, represented by the MoP, and in practice also the agreement of EGPC/EGAS (usually a signatory on the deed of assignment). This requirement is usually explicitly stated under the relevant assignment clause of the concession agreement, and further confirmed by Article 67 of the Executive Regulations of the Fuel Material Law. The Executive Regulations further set out certain conditions that must be met for the MOP to grant its approval on the respective assignment, namely:
1. the assignor's obligations under the concession must be duly performed;
2. the assignee must satisfy certain technical and financial criteria;
3. the deed of assignment must be submitted for review by the EGPC, and should incorporate a provision confirming that the assignee shall abide by all the terms of the concession being assigned; and
4. the assignee must provide a development plan, including the relevant technical and economic considerations and production expectations, for the remaining period of the concession.

Assuming all conditions are duly met, a governmental approval on the assignment of a concessionary interest shall be issued within four to six months. Both the assignor and assignee shall be jointly liable for performing all obligations under the concession. A restriction on assignment, sale or transfer arises only where the Contractor has not already fully satisfied its obligations under the concession agreement on the date when they submit their assignment request to the government.

All such assignments, sales or transfers are tax free including:
- Transfer, capital gains taxes or related taxes.
- Charges or fees.
- Income tax.
- Sales tax.
- Value added tax.
- Stamp duty or similar levies.

Under the model concession agreement, assignment to a third party requires a payment of an assignment bonus, the amount of which differs and is typically determined in the concession agreement. According to the standard terms of a concession, usually, the assignment bonus is equivalent to 10 % of the value of the assignment deal, which could be calculated based on:

a. the financial value to be paid by the assignee;
b. the financial commitments for technical programmes or development plan;
c. the financial value of the reserves;
d. the financial value of shares or stocks to be exchanged between the assignor and assignee; or
e. any other type of deals to be declared

Assignment to a third party is subject to the pre-emption right given to the EGAS or EGPC to acquire the interest. In this regard, if the proposed assignee of an interest under the concession is not an affiliated company of the Contractor or is not another Contractor member under the concession, the EGAS or EGPC shall have preemption rights with respect to the interest under the concession. Accordingly, once the assignor and a proposed third-party assignee have agreed to the final conditions of an assignment, the final conditions must be notified in writing by the assignor to the EGAS or EGPC. The EGAS or EGPC can exercise its pre-emption right by delivering a written notification to the assignor expressing the EGAS or EGPC's acceptance to acquire the interest intended to be assigned on the same terms agreed with the proposed assignee. If the EGAS or EGPC does not deliver such notification in the period specified in the concession agreement, the assignor shall have the right to assign to the proposed assignee, subject to government approval.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

The change of control (as opposed to direct assignment) is not regulated under applicable laws, or explicitly covered under model concession agreements. Typically, the government extends its control over assignments made to direct shareholders, especially in the case where the Contractor is merely a special purpose vehicle, established for carrying out the project in Egypt. However, given the absence of clear guidelines regulating the matter, events of change of control or indirect assignment must be assessed on a case-by-case basis.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

Article 67 of the Executive Regulations of the Fuel Material Law and its Executive Regulations set out certain conditions that must be met for the MoP to grant its approval on the respective assignment, namely:

1. the assignor's obligations under the concession must be duly performed;
2. the assignee must satisfy certain technical and financial criteria;
3. the deed of assignment must be submitted for review by the EGPC, and should incorporate a provision confirming that the assignee shall abide by all the terms of the concession being assigned; and
4. the assignee must provide a development plan, including the relevant technical and economic considerations and production expectations, for the remaining period of the concession.

Are rights holders allowed to create security over their exploration and production rights?

No

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations?

There is no exact time frame designated for completion of exploration operations. Under article (20) of the executive regulation issued by Ministerial Decree no. 758 of 1972, a holder of an exploration licence must commence exploration operations within a period of 6 months, otherwise the licence will be terminated. However, article (21) of the same law stipulates that the drilling works shall continue, by the licensed party, for as long as the drilling goals, as suggested in the drilling program accredited by the EGPC, were not met. The licensed party cannot pause the drilling works or temporarily/ permanently abandon it prior to reaching the drilling goals unless they obtain the EGPC's prior approval.

Are there any prescribed minimum work and expenditure obligations for exploration operations?

No, there are no prescribed minimum work or expenditure obligations on the Contractor regarding the exploration operations. However, Article (35) of law no. (66) of 1953 stipulates that the concessionaire shall commence and continue performing the concession works in a serious manner within a maximum of (4) months starting from the date of the concession agreement. Such performance shall not be deemed continuous if paused for a period exceeding 30 days without obtaining the written approval of the EGPC.

Are there any compulsory relinquishment requirements?

No compulsory relinquishment requirements were stipulated in the concerned law or its executive regulations. However, typically, concession agreements include mandatory relinquishment of any part of the concession area that is not capable of commercial discovery/production, and voluntary relinquishment, where the contractor may voluntarily relinquish all or any part of the concession area at any time, provided that it has complied with its expenditure obligations during the relevant exploration phase.

What are the conditions for transitioning from exploration to development and production?

Following a commercial oil or gas discovery, the Contractor shall notify the competent authority of such discovery and shall make the required tests to rate the discovery. The notice must contain all information about the test. The extent of the whole area capable of production shall be mutually agreed upon by the EGAS/EGPC and the Contractor and will be subject to the approval of the MoP. The area will be converted automatically into a development lease without the issuance of any additional legal instrument or permission. The exploitation phase for each development lease is usually 20 years from the date of the relevant discovery. The development lease period may be extended by the Contractor for an additional period as stipulated under the relevant concession agreement.

What are the conditions for commencement of production operations?

Upon the execution of the development lease, the Contractor, along with the EGAS or EGPC will incorporate a joint venture company (the operating company), which will undertake the exploitation activities. Each party holds a certain percentage of the shares of the operating company and has the right to nominate directors to its board of directors. The operating company will not hold any interest in the concession agreement nor will it be required to contribute to any costs. The Contractor will solely fund all the operations of the operating company. Development operations shall be carried out in accordance with good oil field practices and accepted petroleum engineering principles.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

No there is no obligation on the contractor to refine all the extracted crude oil solely in Egypt. Also, there is currently no published requirement for the refining of oil and gas. An application for a refinery will have to be submitted to the EGPC. The EGPC will then inform an investor of what will be required to carry out a refinery business.

What are the requirements and restrictions for the export of oil and gas produced in jurisdiction? Please specify any applicable domestic supply requirements.

With respect to the oil or gas extracted, priority shall be given to meeting the requirements of the local market as determined by the EGAS or EGPC. In case of unavailability of the local market, the EGAS or EGPC and the Contractor are entitled to export their respective share in the oil or gas, pricing of the produced oil or gas is usually determined under the concession agreement based on its valuation and will be calculated according to a formula stipulated in the concession agreement. In all cases, the oil or gas price can be changed under the concession agreement subject to a revaluation process agreed by the parties.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

Yes, local companies provide upstream services and contractors are free to hire Egyptian / multinational subcontractors to perform the upstream services.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

Subcontractors may be Egyptian or foreign corporations.. There is no legal requirement regarding the local ownership of subcontracting companies that provide upstream services.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies?

The Egyptian Companies law no. (159) of 1981 stipulates that Egyptians must constitute not less than 75% of the technical/ administrative work force of joint stock companies operating in Egypt, as well as limited liability companies, partnerships limited by shares, and single shareholder limited liability companies with a capital exceeding 50,000 EGP. Article (175). Apart from this requirement, there is no other local content requirement in the oil and gas sector.

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?

There are no specific regulations for the oil and gas industry, however, In practice, Contractors engaged in exploration and extraction must comply with the general rules and safety regulations concerning industrial facilities including:
- Environment Law No. 4 of 1994 and related executive regulations;
- supplementary decrees issued by the Minister of Petroleum on the disposal of hazardous materials;
- Law No. 453 of 1954 concerning industrial facilities and other projects that may impose a danger to health;
- Presidential Decree No. 991 of 1987 concerning safety requirements regarding the construction of industrial facilities; and
- Specific requirements and conditions imposed by the relevant authority providing the licences.

Upon entering Egyptian waters, oil tankers that carry more than 2000 tonnes must provide the Egyptian authorities with a certificate of financial guarantee notwithstanding the application of the International Convention on Civil Liability for Oil Pollution Damage (Article (54)), (Environment Law). The guarantee must cover all possible damages that the oil tanker may cause. The required compensation is set by the Ministry of Environment.

Any oil and gas company is subject to an Environmental Impact Assessment (EIA) study carried out by the (The Egyptian Environmental Affairs Agency) (EEAA), to evaluate any environmental risks concerning the oil and gas activity requested to be undertaken. The EIA is conducted based on certain criteria and specifications set by the EEAA. If the assessment results are favourable, the company is granted the required licence to operate. The company has the right to object to the assessment results within 30 days of receipt of the results. The objection is reviewed by a committee formed by the Minister of Environment. The committee must provide its reply within 60 days of receipt of the objection and all related documents.

A licence should be obtained for the storage and disposal of dangerous and hazardous materials. Additionally, an Environmental Registry issued and closely monitored by EGPC/EGAS must be maintained by the operating company to record any complaints filed or violations committed. The registry is regularly inspected by EGPC/EGAS, and the company must rectify any violations according to the recommendations of the relevant authority, The EEAA conducts an annual follow-up to ascertain compliance and must take all the necessary samples and conduct all relevant tests to ensure adherence.

The EEAA files a report after each follow-up. In the case of any violation, the EEAA notifies the competent administrative body, which in turn demands expeditious rectification by the company. If there is failure to rectify within 60 days, the EEAA can, in conjunction with the competent administrative body, take the following measures:
- Close down the company.
- Suspend the contravening activity.
- File legal action for compensation to remedy the damages caused by the violation.

Are there any consequences of a breach of environmental obligations for the rights holder?

Yes, chapter 3 of the Environmental Law is dedicated to maritime protection from oil pollution; the law prohibits companies licensed to carry out exploration or exploitation activities in offshore oil fields from discharging any polluting substances (resulting from carrying out said activities) in the territorial sea or the country's designated economic zones, and to use the best and safest technical measures to treat such discharged waste or polluting substance. Therefore, this company shall be liable to a fine of not less than 300,000 pounds and not more than 1 million pounds. as Also, the Waste Management Law prohibits anyone from disposing of dangerous substances or residues in the territorial sea or the country's designated economic zones. The penalty is life imprisonment and a fine of not less than 5 million pounds and not more than 25 million pounds.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

The laws are silent in this matter.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Yes, and we can summarise them as follows:

In the process of drilling and production
1) all machines and tools used in the operations shall be in a good condition, and must meet all the conditions necessary to ensure its proper use and be of adequate capacity for the work for which it is intended.
2) the base land of the drilling tower and the derrick and all its parts shall be made of materials that can withstand the maximum loads that may be exposed and must be maintained and maintained in good condition and the lifts and keys of the drilling and production lines and the casings must be in good condition and periodically tested and returned in a suitable position with the keys provided with the necessary safety locks.
3) maintenance and observation of the equipment used in the field
4) prohibit smoking on the derrick and in the area of 25 metres of the mine.
5) take all the precautions to prevent any damage that

affect the staff on the derrick and floor, and provide the staff with safety equipment such as gloves, helmets, safety shoes, and proper work clothing.
6) Safety Requirements such as First Aid kits must be on site.
7) The site shall have all requirements for fire fighting.

Which entity is responsible for the enforcement of health and safety regulations or obligations?

The EEAA is the main administrative body responsible for issuing any necessary environmental licences in connection with oil and gas activities, and overseeing, in coordination with EGPC/EGAS, the activities or violations committed by licensed contractors. The Egyptian Process Safety Management Steering Committee (PSM) is formed by EEAA to enforce such regulations.

Are there any consequences of a breach of these requirements for the rights holder?

Article (73) of the executive regulations issued by Ministerial Decree no. (758) of 1972, grants the concerned minister the right to terminate agreements and revoke licenses in case the concessionaire or the licensee breached the concerned law, including the safety requirement and precautions or the agreement.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

The licensee or exploiter bears full legal responsibility for any harm caused, and may face financial penalties or criminal sanctions.

DECOMMISSIONING

What are the decommissioning and abandonments requirements and obligations for oil and gas rights holders in your jurisdiction?

Egypt has no comprehensive legislative tools to regulate the procedures of decommissioning of oil and gas fields. Also, The mechanism for implementing decommissioning is different in each model Production Sharing Agreements adopted for petroleum exploitation by each of EGPC, EGAS and GANOPE. For example, EGPC has not introduced clear and standard rules that regulate decommissioning activities. Meanwhile, the PSAs of EGPC, EGAS and GANOPE state that the Contractor/company shall ensure that all environmental regulations in the country have been followed under the accepted petroleum industry practices at the time of relinquishment (at the expiry date). However, these articles are not a direct decommissioning obligation on the companies.
In all cases, the Contractor will need to prepare a decommissioning programme in accordance with the technical due principles, good oil field practices and accepted petroleum engineering principles and present it to the EGAS or EGPC for approval. Once the EGAS or EGPC approves the proposed decommissioning programme in writing, the Contractor may start the decommissioning process in accordance with such approved decommissioning programme.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

Companies carrying out oil and gas activities in Egypt are subject to income tax at the rate of 40.55%. Under the concession agreement, the competent authority (EGPC/ EGAS) settles, out of its production share, the applicable income tax for or on behalf of the Company. Companies must also prepare a tax return for the Egyptian tax authority within the required due dates.

The Egyptian Government receives royalties from the Contractor (in cash or kind) equivalent to 10% of the total quantity of petroleum produced and saved from the area covered by the concession during the development period including any renewal. This type of royalty is paid by EGPC and not the Contractor.

Are there any tax incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

Yes, there are exemptions and are granted to the Contractors on a routine basis. There are some customs exemptions granted to the Contractor or the operating company with respect to the importation of machinery, equipment and consumable items that are required for the purpose of exploration and exploitation activities under the concession agreement, also, the Contractors can be exempted from paying VAT, however, in this case it only depends on the terms and conditions of the concession agreement signed between the Contractor and the state.

What is the procedure for obtaining any applicable incentives and exemptions?

There are no specific procedures for obtaining any applicable incentives and exemptions, it is included as part of the terms and conditions of the concession agreement

STABILISATION RIGHTS

Are there any forms of stabilisation rights granted to investors in the oil and gas sector?

The stabilisation rights may be agreed in the concession agreement.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

No

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

Usually, the government does comply with the terms agreed upon in the concession agreement.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

N/A, as the same is usually decided on a case by case basis subject to the concession agreement.

DISPUTES

Are there any statutorily prescribed procedures for the resolution of disputes?

As per Law no. 182 of 2018 " on Regulating Contracts Concluded by Public Entities'', the parties to applicable contract agree that any dispute which may arise out of the implementation or interpretation of the provisions of the contract shall be settled amicably between the Parties before resorting to the courts or arbitration. In the event that no amicable resolution has been reached, the dispute shall be finally settled by Egyptian courts and according to law no. 47 of 1972 "State of Council", the disputes related to the concession agreement is one of the special jurisdiction of the Egyptian Administrative Court, hence, disputes arising between the State and the contractor/company must be brought to the competent Egyptian Administrative Court.

However, if any disputes arise between the contractor/company and EGPC or EGAS then it must be settled at the Cairo Regional Centre for International Arbitration as long as that is stipulated in the signed agreement between the parties.

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

N/A

EQUATORIAL GUINEA
CLARENCE ABOGADOS & ASOCIADOS

FIRM INFORMATION

Website address : **www.clarenceabogados.com**
Languages spoken : **French, English, Spanish, Portuguese**
Telephone : +44 (0) 208 036 5004
Address : Clarence International House Avenida de los Parques de Africa Malabo, Equatorial Guinea
Contact : Abraham Abia
Email : abrahamabia@clarenceabogados.com

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

The Oil and Gas (**"O&G"**) sector in Equatorial Guinea (**"EG"**) is mainly regulated by Law No. 8/2006, of November 3rd, on Hydrocarbons in the Republic of Equatorial Guinea (**"Hydrocarbon Law"** or **"HL"**) and the Ministerial Order No. 2/2020, dated 15th of June, on Petroleum Operations in the Republic of Equatorial Guinea issued by the Minister of Mines and Hydrocarbons (the **"Petroleum Operations Regulations"**). These laws set out the legal framework for the execution of petroleum operations and all related activities.

Further, Decree No. 9/2001, of February 7th, creating the National Oil Company of Equatorial Guinea and its amendments by virtue of Decree No. 75/2021, of August 27 (the **"Decree of Creation of GEPETROL"**) are also applicable. Apart from these specific regulations, since petroleum operations affect the environment, private property and the working conditions of the workers involved, the following laws, among others, also apply:

- Decree Law 173/2005 of 8 September 2005 on the Environmental Inspections (the **"EI Law"**);
- Law No. 7/2003 dated 27th of November regulating environmental laws in EG (the **"GEL"**);
- Law No. 4/2021, dated December 3rd on the General Labour Law (the **"GLL"**);
- Law No. 121/2011 dated 5th of September, fixing the minimum wage, as amended (the **"Minimum Wage Law"**);
- Law No. 4/2004 dates 28th of October on the General Tax Code (the **"GTC"**);
- Fundamental Law of Equatorial Guinea dated 16th of February 2012 (the **"EG Constitution"**).
- Administrative Procedure Law dated 29th of August 2014 (the **"APL"**).
- Forced Expropriation Law of the 16th of December 1954 (the **"Expropriation Law"**); and
- Forced Expropriation Regulation of 26th of December 1957 (the **"Expropriation Regulation"**).

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

The Petroleum Operations Regulations is primarily administered by the Ministry of Mines and Hydrocarbons ("MMH"). The MMH has the following responsibilities[1]:

- management of hydrocarbons and petroleum operations;
- Formulation, regulation and monitoring of petroleum operations;
- management, planning, implementation, supervision, inspection, auditing and enforcement of all petroleum operations and all related activities;
- Negotiating, signing and executing all contracts entered into between the State and Contractors.
- Amending the terms of any contracts to ensure that petroleum operations are carried out for the benefit of the State; and
- Authorising and regulating, for and behalf of the State, contractor´s activities are authorized.

Further, all contractors and their associates are required by law to cooperate with the MMH in the exercise of its supervisory powers.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

Under the EG Constitution, EG can explore and exclusively exploit all mineral resources and riches as well as its hydrocarbons.

Moreover, the HL provides that all hydrocarbon reservoirs that exist in the surface and subsoil areas of EG, including its inland waters, territorial waters, exclusive economic zone and Continental Shelf are the exclusive property of the State. The HL further provides that the State is the holder of all hydrocarbon exploration rights in EG and that, in addition to performing petroleum operations on its own or through national companies, the State may perform petroleum operations in association with a contractor.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

Article 29 of the EG Constitution provides that O&G activities are reserved for the State.

Contracts conferring the right to conduct petroleum operations (both exploration and production activities) in EG are awarded through a competitive international tender or by direct negotiation for reserved areas of the State. Only companies that have suitable technical and financial capability, and proven experience in the oil and gas industry can be awarded a contract for exploration and production of O&G.

Please provide an overview of the procedure for obtaining such exploration and production rights.

The MMH has the sole right and authority to award contracts on behalf of the State. These contracts may be awarded after consideration of bidders in a competitive international public tender system or by direct negotiation for reserved areas of the State.

For a company to be awarded a contract with the State, the MMH is required to perform due diligence to ascertain that the company has the suitable technical and financial capability, as well as proven experience in the oil and gas industry.

Contracts with the State shall be based on the Production Sharing Contract ("PSC") model approved by the MMH.

It is important to note that a contract signed with the MMH is not final in terms of its enforceability unless same is ratified by the President of EG. The contract only comes into force after the delivery of a written note of the said ratification to the contractor.

Are there any fees and charges applicable to obtaining these rights?

Contractors may be required to pay a fee at the time of the public tender (whenever this is required, the MMH will state so in the conditions).

What is the duration of the exploration and production rights?

In the case of exploration of mature fields, ultra-deep waters and marginal fields, contracts can be for up to 10 years and shall be renewed every 5 years prior to study and evaluation by the MMH. Nevertheless, the duration is established in the contract and its according to the different phases:

As for development and production rights, it has a duration of 25 years, starting from the date of approval of the development and production plan presented by a contractor to the MMH. After such period, a contractor may request an extension of up to 5 years provided the applicant (the contractor) has fulfilled all its obligations under the contract and can demonstrate that commercial production is still possible.

Are the exploration and production rights renewable? What are the renewal processes?

Yes, such rights are renewable. The new term or duration will be based on the result of negotiations with the Government, and prior application for renewal to the MMH. As an illustration, in 2022, Block G PSC was extended to 2040.

For exploration, there are initial periods (4-5 years) and two extension periods (of 1 year each) which duration can be shorter or extended by the MMH, at its sole discretion.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

Article 157 of the Petroleum Operations Regulation regulates the State´s participation in O&G activities. The State has the right to invest or participate in any contract area, either directly or through the national oil company or the national gas company, as determined by the MMH. And the terms of such investment or participation shall be negotiated between the MMH and the Contractor, and shall be clearly set forth in each contract.

The State´s investment or participation in a contract area shall be made by means of an carried interest or with payment obligations, as determined by the MMH, of not less than twenty (20) per cent unless the Government agrees otherwise.

The State´s participation through a State-owned company is usually through the national oil company Compañía Nacional de Petroleos de Guinea Ecuatorial de Petroleos ("GEPETROL") which currently holds equity interest in Block G and Block EG-01

GEPETROL is also entitled to a percentage of all hydrocarbons won and saved from a contract area based on the terms agreed in each Contract and after deduction of royalties (in cash or kind[8]) and investment recovery oil.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

The law provides that the national oil company, GEPETROL, should be a partner in all oil assets and hold a 35% interest. This percentage is however negotiable.

In the event of an acquisition of an interest under an existing PSCs, in line with the law, GEPETROL has a pre-emption right and must issue a written confirmation that it is not interested in acquiring the interest the partner intends to sell before the transaction can proceed.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

Contractors must comply with the following:

1. establish a branch in EG within 6 months of the entry into force of their contract;
2. open and maintain a bank account in EG with a minimum balance sufficient for guaranteeing their obligations; and
3. construct an EG headquarters.

And any company associated with the contractor in the conduct of petroleum operations shall also comply with the requirement to establish a branch 1 and provide a bank guarantee approved by the MMH, in addition to any other applicable agreements or licenses.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

There are a number of laws and regulations that establish various local content obligations in areas such as human resources, social projects, procurement & sourcing, finance, tax and client and supply chain contracts. Below are some of the main obligations companies need to comply with, as contemplated by law:

- Employ only Equatoguinean citizens in all positions and functions, except if there are no Equatoguinean citizens available with the required qualifications and experience;
- Expatriate personnel cannot exceed 30% of the company´s personnel ratio;
- Companies are required to put in place training and development plan and system of evaluation for nationals;
- Preference shall be given to national companies and goods, services, and capital of EG origin, provided that they are of the same or comparable quality as imported items and available for sale and delivery in due time, and provided that prices are no more than ten per cent higher than imported items including transportation and insurance costs and customs charges; and
- Implementation of social projects with an annual budget (PSC).

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

Pursuant to section 171 of the Petroleum Operations Regulations, the assignment, transfer, encumbrance or other provision of the rights and/or obligations of a party constituting the contractor shall be subject to the prior authorisation of the MMH. The authorisation approving such transfer or transfer will establish the requirements, including payment of a fee which will be determined by the MMH.

Also, the assignor and the assignee shall be jointly and severally responsible for the payment of such fee and for the fulfilment of other requirements.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

The transfer of ownership of more than 50% of the shares of any party constituting the contractor (except a state-owned company), or a similar transfer resulting in a change of control, shall be considered as a transfer of contractual rights under the PSC and will, therefore, be subject to approval by the MMH.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

As per section 171 of the Petroleum Operations Regulation, the conditions for granting governmental authorisation will be communicated by the MMH after submission of all information relating to the transaction, such as:

- all legal instruments, in the form of a final project, which will be used to carry out the proposed transaction;
- the identity of all parties involved in the transaction;
- the estimated value of the transaction; and
- whether the consideration is payable in cash, securities, kind or otherwise.

Are rights holders allowed to create security over their exploration and production rights?

As per section 171 of the Petroleum Operations Regulation, the creation of a security interest over exploration and production rights requires the MMH's prior authorization

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations?

Each phase of the contract, namely exploration, evaluation, development and production phases are detailed in each contract and the MMH has the prerogative to shorten or extend the initial exploration periods and extension periods contemplated in the HL or the PSC model.

The exploration period (comprised of the exploration phase and the appraisal phase) is divided into:

- an initial exploration period divided into two (2) sub-periods, the first and second exploration sub-period. The duration of the initial exploration period shall be between four (4) and five (5) years, as specified in the relevant contract; and
- a maximum of two (2) extension periods which shall be for a term of one (1) year each.

The duration of the first exploration sub-period, the second exploration sub-period, the first extension period, and the second extension period will be specified in the contract and can also be extended by the MMH.

Are there any prescribed minimum work and expenditure obligations for exploration operations?

Minimum work obligations to be accomplished by the contractor during each phase of the first exploration period shall be specified in each contract, including in each case the minimum expense for that period in U.S. dollars or any other currency acceptable to the contractor and the MMH and specified in the contract.

Are there any compulsory relinquishment requirements?

PSCs provides for the obligation of the contractor to relinquish part or parts of the contract area and waive it in favour of the State, as per article 28 of the HL. The exact manner, percentage, and time is further expanded in section 36 of the Petroleum Operations Regulations as follows:

- At the end of the initial exploration period, a minimum of forty (40) percent of the initial contract area.
- At the end of the first extension period, a minimum of twenty-five (25) percent of the rest of the contract area.

Nevertheless, a different percentage can be included by the MMH in the contract. And the following areas shall be excluded from the waiver: (a) any designated evaluation area; (b) any area designated for development and production; (c) any other area where approval of a development and production plan is pending; (d) the area of any field, including any field that may be subject to unitisation or discussion about joint development; (e) any area for which the Contractor is in negotiations with the MMH, regarding the evaluation of a discovery of a non-associated natural gas.

At the end of the Second Extension Period, the Contractor shall waive in favour of the State the remainder of the contract area, with the exception of: (a) any area designated as development and production; (b) any other area where approval of the development and production plan is pending; (c) the area of any field, including any field that may be subject to unification or discussions on joint development; (d) any area in which the Contractor is in negotiations with the Ministry, with respect to the Evaluation of a discovery of a non-associated natural gas.

What are the conditions for transitioning from exploration to development and production?

The conditions for transitioning to such phases are as follows:

- The contractor must first make a discovery in the contract area and notify the MMH;

- If the contractor considers that the discovery requires an evaluation, the contractor shall submit the evaluation work schedule and the corresponding budget to the MMH. The duration of the evaluation work schedule in the case of crude oil may not exceed twenty-four (24) months; and
- A declaration of a commercial discovery is the event that marks the beginning of the development and production period.

Further, an evaluation report is submitted to the MMH within six (6) months after the completion of the approved evaluation work schedule and in any event no later than thirty (30) days before the expiration of the exploration period, and shall provide all the technical and economic information of the discovery and a confirmation of whether, in the contractor's opinion, such discovery is a commercial discovery. The evaluation report should include, without limitation, the following information:

- the geological and petrophysical characteristics of the discovery;
- the estimated geographical extent of the discovery;
- the thickness and extent of the productive layers;
- pressure, volume and temperature (PVT) data;
- the productivity rate of the tested wells;
- the characteristics and quality of oil discovered;
- preliminary estimates of on-site hydrocarbons and reserves;
- the enumeration of other characteristics important and the properties of deposits and fluids discovered;
- preliminary economic study with respect to the exploitation of discovery; and
- any additional information and evaluations that the Ministry may require.

What are the conditions for commencement of production operations?

The MMH shall first approve a development and production plan before development and production operations can commence. However, exceptionally, the MMH may authorise a contractor to carry out certain activities included in a development and production Plan before the plan is officially approved.

Also, a contract may be awarded only for the development and production phases or only for the production phase, if the MMH so determines.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

To carry out refining activities, a license needs to be obtained from the MMH through an application.

The MMH shall only grant a licence to companies who have an adequate technical and financial capacity, as well as the experience necessary in the petroleum industry to carry out the activities authorised by the licence.

The MMH may deny an application on the basis that it considers that the applicant is not an adequate person to hold a licence for such activities.

This license is subject to a fee.

What are the requirements and restrictions for the export of oil and gas produced in jurisdiction? Please specify any applicable domestic supply requirements.

Sections 137 and 161 of the Petroleum Operations Regulation contemplates that, upon notification of at least ninety (90) days, the MMH may, any time, require any contractor to sell and transfer to the State the quantities of crude oil and/or natural gas required to meet domestic consumption needs. Therefore, the contractor´s right to freely export amounts of hydrocarbons allocated to the contractor under the contract is subject to domestic consumption requirements.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

In our opinion, yes, there is.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

Decree 72/2018 imposes national ownership and management rules for companies to operate in the O&G sector:

- Companies registered in EG by foreigners who wish to invest in the petroleum sector should not have less than 3 EG shareholders (EG nationals or companies fully held by EG nationals);
- The EG shareholders must hold equity interests in the relevant companies corresponding at least to 35% of their share capital; and
- The EG shareholders must be able to designate 1/3 of the members of the board of the relevant companies who must be entrusted with effective management powers.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies?

As per section 162 of the Petroleum Operations Regulations, contractors and their associates and any other person or persons cooperating with them in carrying out exploration and production operations shall give preference to national companies and goods, services, and capital of EG origin, provided that they are of the same or comparable quality as imported items and available for sale and delivery in due time, and provided that prices are no more than ten per cent higher than imported items including transportation and insurance costs and customs charges.

Also, persons from EG shall be contracted on conditions no less favourable than those used for foreign suppliers and contractors.

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?

The general principal is that all petroleum operations are to be conducted and executed in a manner compatible with the conservation and sanitation of the environment and other resources of EG.

Further, petroleum operations are required to be conducted in a prudent manner using the best technical and scientific practices available in the petroleum industry and taking into account the safety of persons and facilities, as well as the protection and sanitation of the environment and the conservation of nature. More specifically, a contractor needs to comply with and act in line with the GEL and EI Law.

Also, contractors and their associates are required to submit to the MMH, within the time frames established by the MMH, the plans required by environmental law and the terms of their contract, specifying the practical measures which should be taken in order to prevent harm to the environment, including environmental impact assessment studies and audits, plans for ecosystem and structural rehabilitation and permanent management and environmental auditing plans. Additionally, the same documentation shall later be submitted to the Ministry of Forest and Environment for its examination and approval.

Are there any consequences of a breach of environmental obligations for the rights holder?

Non-compliance with environmental legislation by a contractor or their associates is an infraction recognized by the HL which shall be sanctioned according to the regulations in effect regarding the Environmental Law. Applicable sanctions include the imposition of a fine.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

Environmental obligations are imposed by the HL on both contractors and their associates, which means any subcontractor, affiliate, subsidiary or other person associated with a contractor in the conduct of petroleum operations.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

The HL and the Law No. 4/2021, dated December 3rd on the General Labour Law (the "GLL") set out numerous rules for health and safety of both operations and employees in the sector, such as:

a) Petroleum operations are to be conducted and executed in a manner compatible with the conservation and sanitation of the environment, hydrocarbons and other resources of the country.

b) petroleum operations shall be conducted in a prudent manner using the best technical and scientific practices available in the petroleum industry and taking into account the safety of Persons and facilities, as well as the protection and sanitation of the environment and the conservation of nature.

c) Also, companies are required to:

- implement appropriate measures in their commercial and industrial to create and maintain the best possible workplace health and safety conditions, preventing work hazards to the extent possible;
- train workers to provide assistance in the event of accidents and in health and safety matters;
- promote and ensure the health, safety, and hygiene of their workers when performing their duties;
- bear all costs of measures relating to health and safety measures;
- provide hands-on training to workers in health and safety matters upon hiring them, when they change workplaces, or when they are required to learn a new work process or use new substances that may entail hazards to themselves, their co-workers, or third parties. The employer must at all times ensure that no employees are exposed to conditions or physical, chemical, biological, environmental, or other agents without advising them as to the harm those conditions or agents may cause to their health and the ways of preventing such harm;
- ensure that employees undergo medical examinations every six months at the company's expense;
- provide employees with appropriate protective clothing and equipment to prevent risks of accidents or harm to their health;
- evaluate, fight, avoid, and prevent the occurrence of hazards, accidents, and occupational illnesses;
- provide medical and paramedical services and medications to their workers in accordance with the types of hazards to which they are exposed;
- duly note employees complaints regarding the work environment and work conditions, and adopt any necessary measures;
- promote employees participation in health and safety committees;
- set conditions and procedures for work and production that have the least negative impact on workers' health, safety, and hygiene;
- ensure compliance with provisions on safety and protection at work.

Which entity is responsible for the enforcement of health and safety regulations or obligations?

Both the Ministry of Labour (for labour regulations) and the MMH.

As per the HL and the Petroleum Operations Regulations, companies operating in the O&G sector are subject to the supervision of the MMH, which, according to section 144 of the Petroleum Operations Regulation establishes safety areas around the equipment and facilities used for petroleum operations.

Are there any consequences of a breach of these requirements for the rights holder?

Non-compliance with health and safety legislation by a contractor or their associates is an infraction recognized by the HL which shall be sanctioned according to the regulations in effect regarding the Environmental Law and Labour Law, at the time the infraction is committed, including an imposition of a fine.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

Health and safety obligations are imposed by the HL on both contractors and their associates, which mean any subcontractor, affiliate, subsidiary or other person associated with a contractor in the conduct of petroleum operations.

DECOMMISSIONING

What are the decommissioning and abandonments requirements and obligations for oil and gas rights holders in your jurisdiction?

First of all, the contractor must have in place an approved abandonment plan of all wells, facilities and equipment, the rehabilitation of the landscape and the continuation of petroleum operations, if applicable. As stated, the plan is subject to the prior approval of the MMH and it may also be amended by the contractor and the State from time to time to take account of further petroleum operations.

Further, the contractor must establish and contribute to a reserve fund to provide for all future abandonment costs. Such reserve fund must take the form of an interest-bearing account to be opened in the name of the contractor and the State with an international financial institution acceptable to each of them. The amount to be deposited by the contractor, as well as the timing of such deposits, shall be established in the abandonment plan approved by the MMH.

Such abandonment plan shall be prepared and delivered to the MMH upon the earlier of (i) six (6) years prior to the estimated commencement of abandonment operations, (ii) the date on which fifty percent (50%) or more of the recoverable Hydrocarbons from a Development and Production area have been produced and (iii) one (1) year prior to the termination of the applicable Contract or the proposed date of the abandonment of any production area included therein.

Are there any particular events or timelines that trigger decommissioning obligations?

As per the HL, abandonment of any Contract Area or part thereof. Although, the contract with the State may contain other triggering events or timelines.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

The regime under the Tax Law is applicable to contractors and their associates, in addition to royalties, surface rentals as per the terms of the contract, customs duties and any other similar taxes, as well as any windfall tax that may be imposed by the State.

#	TYPE OF TAX	RATE
1.	Corporate Income Tax ("CIT"). Applicable to registered companies and branches.	35%
2.	Minimum Income Tax ("MIT") applicable to the turnover of the previous financial year and it is deducted from the CIT corresponding to the fiscal year it was settled.	3%
3.	Withholding Tax ("WHT") applicable to non-residents oil companies who are taxpayers on their gross income obtained in EG.	15%
4.	WHT applicable to service providers operating in the oil & gas sector with residence in EG.	6.25%
5.	Personal Income Tax ("PIT") for personnel	The rate (10% to 35%) depends on the annual taxable income

Are there any tax incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

PSC usually contain provisions to exempt operators from customs duty and import taxes. This will depend on each contract.

Additionally, foreign investment can benefit from certain tax incentives contemplated in Law No. 7/1.992, dated 30 April, on the Investment Regime in the Republic of Equatorial Guinea, as amended. Benefits include reductions corporate income tax and , employees income tax , etc.

What is the procedure for obtaining any applicable incentives and exemptions?

The tax incentives under the Law on Investment Regime are obtained by application to the Ministry of Finance.

STABILISATION RIGHTS

Are there any forms of stabilisation rights granted to investors in the oil and gas sector?

Stabilization clauses are usually negotiated by the State and the contractor and included in the contract, which are ratified by the Head of State. Nevertheless, the State has the ability to terminate any contract, in whole or in part, for public interest reasons; such termination can only occur upon the payment of fair compensation, which is negotiated between the State and the contractor. If no agreement is reached, the amount of compensation is determined by arbitration conducted in accordance with the terms of the relevant contract.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

This is usually negotiated by the State and the contractor and included in the contract.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

To the best of our knowledge, yes. PSC are contracts that are ratified by the Head of State usually through a decree and, thus, attain the status of law.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

To the best of our knowledge, we are not aware of any.

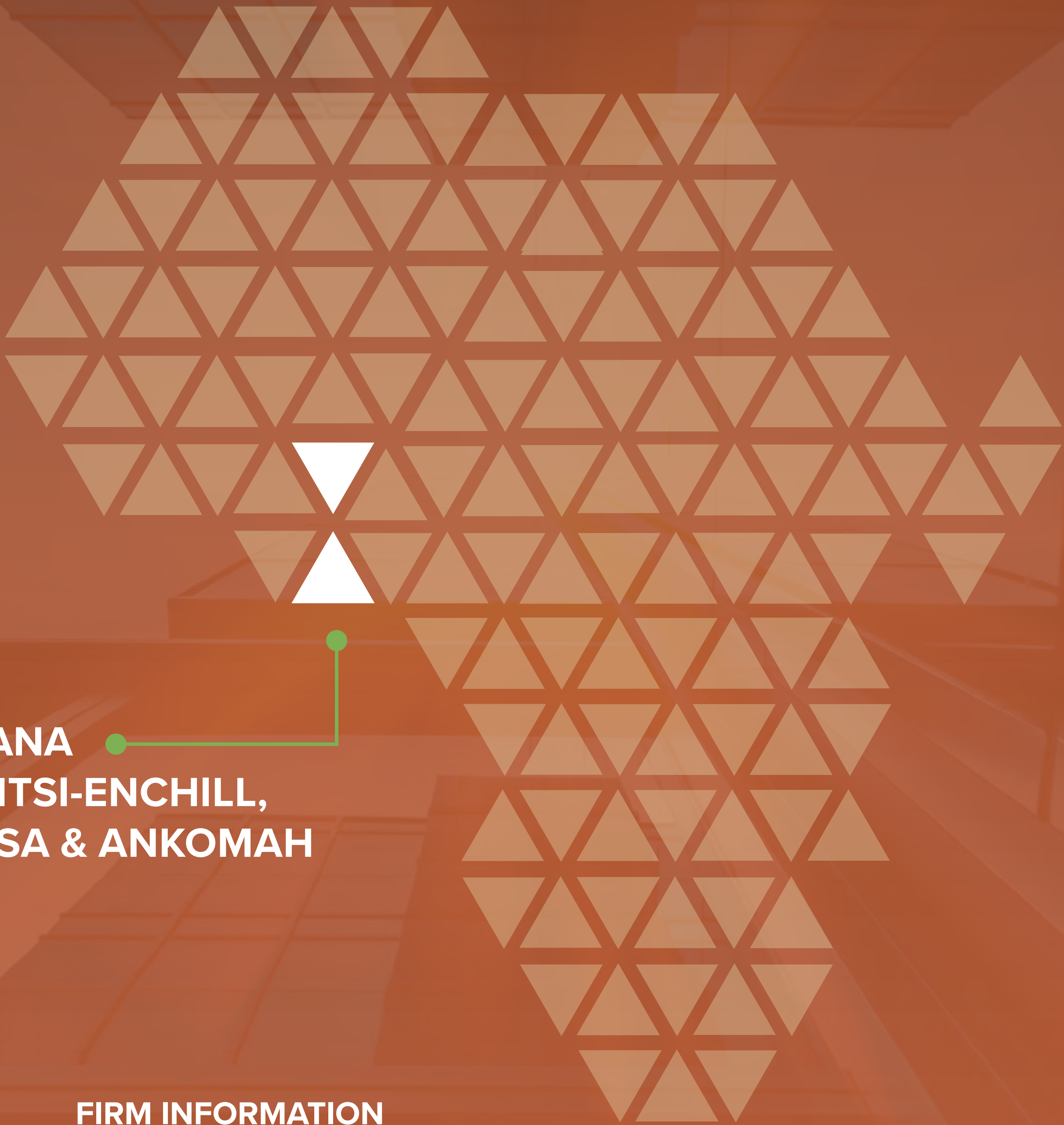
DISPUTES

Are there any statutorily prescribed procedures for the resolution of disputes?

Section 185 of the Petroleum Operations Regulations states that disputes that may arise between the MH and the Contractor which relate strictly to contractual matters under the contract shall be resolved by an agreement between the parties, in accordance with the principles of good faith, fairness and the balance between the interests of the parties. If the parties fail to agree on the resolution of a dispute, that dispute shall be brought before the courts of EG, or if the Contract so provides, to international arbitration in accordance with the arbitration provisions in the contract. The law applicable to a Contract shall be the law of EG.

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

Not applicable.



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FIRM INFORMATION

Website address : **www.bentsienchill.com**
Languages spoken : **English**
Telephone : + 233 30 220 8888
Address : 4 Momotse Avenue, Adabraka, Accra
Contact : Seyram Dzikunu
Email : sdzikunu@bentsienchill.com

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

The primary laws regulating Ghana's oil and gas sector include:
- the Constitution of Ghana;
- the Companies Act, 2019 (Act 992);
- the Ghana Investment Promotion Centre Act, 2016 (Act 865);
- the Petroleum (Exploration & Production) Act, 2016 (Act 919);
- the Petroleum Revenue Management Act, 2011 (Act 815) (as amended);
- the Petroleum Commission Act 2011 (Act 821);
- the Environmental Protection Agency Act, 1994 (Act 490) (EPA Act);
- the Ghana Shipping Act 2003 (Act 645);
- the Maritime Pollution Act, 2016 (Act 932); and
- the Income Tax Act, 2015 (Act 896) (as amended).

Further, the following regulations (passed pursuant to the above laws) also govern the oil and gas sector:
- the Petroleum (Exploration and Production) (General) Regulations, 2018 (LI 2359) (as amended);
- the Petroleum (Exploration and Production) (Data Management) Regulations, 2017 (LI 2257);
- the Petroleum (Exploration and Production) (Measurement) Regulations 2016 (LI 2246);
- the Petroleum Revenue Management Regulations, 2019 (LI 2381);
- the Petroleum (Local Content and Local Participation) Regulations, 2013 (LI 2204) (as amended);
- the Petroleum Commission (Fees and Charges) Regulations, 2015 (LI 2221);
- the Petroleum (Exploration and Production) (Health, Safety and Environment) Regulations, 2017 (LI 2258); and
- the Environmental Assessment Regulations, 1999 (LI 1652).

Supplemental to the Acts and regulations are directives, guidelines, and related instruments that provide further detailed requirements applicable to the oil and gas industry in Ghana. Notable guidelines, directives, and instruments related to the industry include:

- the Guidelines for the Formation of Joint Venture Companies in the Upstream Petroleum Industry of Ghana (JV Guidelines);
- the Social Performance Guidelines for Upstream Petroleum Companies;
- the Protocol: Oil & Gas Insurance Placement for the Upstream Sector;
- the Guidelines to Petroleum (Exploration & Production) (Measurement) Regulations, 2016 (L.I. 2246);
- the Health, Safety, Security and Environment (HSSE) – Manual for Energy Sector Organizations;
- the Ghana Model Petroleum Agreement;
- the Offshore Oil and Gas Development in Ghana Guidelines for Environmental Assessment and Management ("the EPA Guidelines for Offshore Oil and Gas Development"); and
- the National Oil Spill Contingency Plan (Version 6.0).

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

The Ministry of Energy

The Ministry of Energy is responsible for energy policy formulation, implementation, monitoring and evaluation as well as supervision and coordination of activities of Ghana's energy sector, which includes the upstream petroleum industry. The Minister of Energy (the Minister) heads the Ministry and is responsible for, among other things, negotiating and entering into petroleum agreements on behalf of the Republic, approving plans in connection with the development, production, and decommissioning of a field, and to grant applicable licences for the treatment, transportation, and storage of petroleum.

Petroleum Commission

The Petroleum Commission is the body established to regulate and manage the utilisation of petroleum resources and coordinates the policies in the upstream petroleum sector. Further to this object, the Commission recommends policies for the oil and gas sector to the Minister, promote the optimal exploitation of the country's oil and gas resources, monitor petroleum operations to ensure compliance with applicable laws, promotes local content and local participation, etc.

Environmental Protection Agency

The Environmental Protection Agency (EPA) is the body generally responsible for oversight on matters affecting the environment, including the protection and preservation of the environment in Ghana. The EPA advises the Minister responsible for the environment on environmental policy, issues permits for activities that may affect the environment, prescribes standards and guidelines for undertakings potentially harmful to the environment and generally ensures compliance with environmental laws in Ghana.

Ghana Revenue Authority

The Ghana Revenue Authority (GRA) is the entity responsible for assessing, collecting and accounting for direct and indirect tax revenue in Ghana, including petroleum revenue. The GRA's core mandate is to ensure compliance with tax laws, promote efficiency in tax collection, and combat tax fraud and evasion through co-operating and collaboration with law enforcement agencies in foreign jurisdictions.

Ghana Maritime Authority

The Ghana Maritime Authority (GMA) is responsible for enforcing international maritime conventions and national rules and regulations. The Authority is also responsible for the co-ordination, monitoring and regulation of activities in Ghana's maritime industry. Given that Ghana's oil and gas activities are primarily conducted offshore, the GMA plays a crucial role in the industry.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

The State has title to the oil and gas resources of the country. Petroleum (oil and gas) in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and is vested in the President on behalf of, and in trust for the people of Ghana.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

To undertake exploration and production of petroleum in Ghana, a petroleum agreement is entered into between the State, the rights holder and the national oil company. The petroleum agreement gives a person the right to engage in the exploration, development and production of petroleum. Only body corporates are qualified to be granted the rights to undertake exploration and production under the authority of a petroleum agreement.

Please provide an overview of the procedure for obtaining such exploration and production rights.

A person may obtain the rights to exploration and production by means of either a tender process or direct negotiation. An overview of these distinct processes is discussed below.

I. Tender process

This is an open, transparent and competitive public tender process. The tender process entails the following:
- publication of invitation to tender;
- submission of expression of interest;
- evaluation of bids if more than one expression of interest is submitted;
- deciding on bids based on requirements; and
- entry into a petroleum agreement.

A pre-qualification process may be interposed prior to the tender process if the Minister so decides, with the objective of qualifying prospective bidders.

II. Direct negotiation

Direct negotiations may also be conducted under the following circumstances:

a. where all or part of the area offered for tender in a public tender process has not become the subject of a petroleum agreement but the Minister determines that it is in the public interest for that area to be subjected to a petroleum agreement; or

b. where the Minister in consultation with the GNPC decide that direct negotiations represent the most efficient manner to achieve optimal exploration, development and production of petroleum resources in a defined area.

The process for direct negotiations entails:

- publication of invitation for direct negotiations in the same manner as a public tender;
- submission of expression of interest to the Minister; and
- negotiation of terms and entry into the petroleum agreement

A petroleum agreement entered into by the Minister requires ratification by Parliament to be effective.

Are there any fees and charges applicable to obtaining these rights?

An applicant of a petroleum block on offer must pay the prescribed bidding fee to be eligible for the bid. The applicant must also pay the applicable fees for data licensing to be able to access available data on the petroleum block.

Where a bid or negotiation is successful and a petroleum agreement is entered into, the applicant will be required to pay a signature bonus as agreed following the ratification of the petroleum agreement by the Ghanaian Parliament.

In Ghana's last petroleum licensing round conducted in 2019, a bidding fee of USD 10,000 and a data licensing fee of USD 250,000 were imposed.

What is the duration of the exploration and production rights?

A petroleum agreement is granted for a period not exceeding 25 years.

Are the exploration and production rights renewable? What are the renewal processes?

The term of a petroleum agreement may be extended but subject to a determination that the production from a field is projected to extend beyond the original term of the petroleum agreement. Under such circumstances, the Minister may:

a. approve an extension of the petroleum agreement on the terms agreed by the parties; or

b. execute a new petroleum agreement by direct negotiations to ensure optimal production from the field.

In either case, the extension of a petroleum agreement or the execution of a new petroleum agreement requires ratification by Parliament.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

Yes, the State through the national oil company, Ghana National Petroleum Corporation (GNPC) holds a guaranteed initial participating interest of at least fifteen percent in a petroleum agreement. This interest is carried by the contractor for exploration and development operations without any right of reimbursement from the State or the GNPC.
The GNPC has a further right or option to acquire an additional participating interest as determined by the petroleum agreement. The option must be exercised within a specific period of time as agreed in the petroleum agreement following the declaration of a commercial discovery. The additional participating interest is a paying interest in respect of costs incurred in the conduct of petroleum activities other than exploration costs.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

Yes, there are local participation requirements. A contractor must have at least a 5% equity participation of an indigenous Ghanaian company to be qualified to enter into a petroleum agreement or a petroleum licence. This 5% local participation requirement is additional to the participation interests conferred on the GNPC.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

Yes, there are. Foreign persons seeking to acquire exploration and production rights in Ghana must incorporate a company in Ghana which shall be the party to the petroleum agreement. Additionally, the foreign person must maintain an office in Ghana from which the petroleum activities shall be managed; have a representative having full authority to act and enter into binding commitments on behalf of the foreign person; and open and maintain a bank account in Ghana for its petroleum activities.

Further to the above, there are also general foreign minimum capital requirements that apply to companies seeking to do business in Ghana and having foreign shareholding. In the case of wholly owned foreign companies, a foreign minimum capital of USD 500,000 is required whereas a USD 200,000 foreign capital would apply in the case of a company with a combination of foreign shareholding and Ghanaian shareholding of at least 10%. In the case of a trading company with foreign shareholding, the foreign minimum capital requirement is USD 1,000,000. All companies with foreign shareholders are also required to be registered with the Ghana Investment Promotion Centre (GIPC).

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

Yes, there are local content requirements applicable in the oil and gas industry in Ghana spanning the areas of employment and training, and the procurement of goods and services.

A contractor must ensure that Ghanaian citizens who have the requisite expertise or qualifications in various levels of activities are generally employed in accordance with applicable enactments and the terms of the petroleum agreement. Contractors must employ only Ghanaians in junior-level or mid-level positions. In respect of any other position where expatriates are employed, a Ghanaian must be engaged to understudy and eventually succeed the expatriate in the role.

Regarding procurement, contractors must generally give a preference to the procurement of goods and services from indigenous Ghanaian companies. Contracts may not be awarded solely on a lowest bidder basis. A contract must be awarded to an indigenous Ghanaian company, where the Ghanaian company's bid does not exceed the lowest bid by more than 10%.

Further, contractors are required to procure the services of only Ghanaians in the legal, banking, and insurance sectors, as applicable.

Contractors are also to implement approved long-term and annual local content plans (with their accompanying sub-plans on employment, R&D, technology transfer, legal services and financial services). The contractor must report on the implementation of these plans yearly in accordance with the local content regulations.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

A contractor or a licensee requires the written approval of the Minister to directly or indirectly assign its interest under a petroleum agreement, whether in whole or in part to a third party or an affiliate.

The Minister may impose conditions on the contractor or licensee before granting approval for the transfer, which typically may include clearance certificates from (i) the Petroleum Commission, in respect of regulatory compliance and (ii) the Ghana Revenue Authority, in respect of tax matters.

Where the contractor enters into an agreement to dispose of all or part of the interest of that contractor, directly or indirectly under a petroleum agreement, GNPC has a pre-emption right to acquire the interest on the same terms as agreed with the potential buyer.
Regarding taxes, any gain made from the assignment of an interest in a petroleum agreement must be computed as part of the income of the contractor from petroleum operations and taxed at the applicable corporate income tax rate for contractors. Please see the section on fiscal regime below for further details.

Assignments of interests in a petroleum agreement must be registered with the Petroleum Commission. A fee of 1% of the consideration for the transfer capped at USD 1,000,000 applies in respect of the registration.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

Yes, there are. A contractor is prohibited from transferring a share of its company in Ghana to a third party or affiliate without written approval of the Minister, if the effect of the transfer would be to:
I. give the third party or affiliate control of the company; or
II. enable the third party or affiliate to take over 5% or more of the shares of the company.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

As indicated in the response to Question 4(a) above, the Minister's conditions for the grant of consent to an assignment may include clearance certificates from (i) the Petroleum Commission, in respect of regulatory compliance and (ii) the Ghana Revenue Authority, in respect of tax matters.

Other customary conditions include;

(i) resolutions confirming approval for the assignment by the parties to the transfer;

(ii) evidence of technical and financial competence;

(iii) a parent company guarantee in respect of the obligations to be assumed by the transferee under the petroleum agreement; and

(iv) evidence of compliance with the GNPC's pre-emption rights.

Are rights holders allowed to create security over their exploration and production rights?

Yes, contractors are allowed to create security over their participating interests under a petroleum agreement.[41] The security may, however, only be created with the approval of the Minister and only in respect of or for the benefit of petroleum activities in Ghana.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations?

The exploration period is for a period not exceeding seven years from the effective date of the petroleum agreement.[43] The exploration period may, however, be extended in certain prescribed exceptional cases, or where a discovery of petroleum is made in the last year of the exploration period and an extension is necessary to conduct an appraisal of the discovery.

The exploration period consists of working periods, being an initial exploration period and up to 3 extension periods as prescribed in the petroleum agreement.

Are there any prescribed minimum work and expenditure obligations for exploration operations?

There are no statutorily prescribed minimum work or expenditure obligations as these are reserved for the petroleum agreement. A petroleum agreement must include a term on the minimum work obligation and corresponding expenditure amount to be fulfilled by the contractor during each working period of the exploration phase. Failure to fulfil the minimum work obligations within the stipulated time may make the contractor liable to pay the GNPC the amount required to complete the unfulfilled portion of the work program for the working period. Alternatively, the Minster may terminate the petroleum agreement altogether.

Are there any compulsory relinquishment requirements?

Yes. When the contractor elects to enter into the first extension period within the exploration period, the contractor must relinquish at least 50% of the contract area. When the Contractor elects to enter into the second or third extension period, the retained contract area must not exceed 25% of the original contract area as of the effective date of the petroleum agreement.

What are the conditions for transitioning from exploration to development and production?

Where a discovery is declared to be commercial and development is required, the contractor must submit to the

Minister for approval a plan of development and operation in respect of the petroleum field to be developed. This plan must contain a description of the development programme and production programme together with an environmental report approved by the appropriate institutions in accordance with applicable enactments.

A plan of development and operation becomes effective upon the prior written approval of the Minister.

What are the conditions for commencement of production operations?

Following the completion of the development of a discovery in accordance with the plan of development and operation, a contractor may commence production activities upon obtaining the approval of the Petroleum Commission.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

A person needs a licence from the Minister to install or operate a facility for transportation, treatment or storage of petroleum. The person also needs a permit from the Petroleum Commission to commence installation and operation of any such facility. This license may be obtained through an application to the Minister or be an existing right derived from the approval of a plan of development and operation.

What are the requirements and restrictions for the export of oil and gas produced in your jurisdiction? Please specify any applicable domestic supply requirements.

In Ghana, a contractor may export the contractor's entitlements to petroleum in accordance with the terms of a petroleum agreement. However, in the event of war or other emergency affecting energy supplies, the Minister may require a contractor to supply all or part of the quantity of petroleum produced at the prevailing market price to the State or any agency thereof at the prevailing market price.
A contractor may also be required to sell a percentage of its production entitlements to the State at the prevailing market price if the Minister so determines to meet the domestic supply requirements.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

Yes, Ghana has a viable oil and gas services industry. Ghana currently has three producing offshore oil and gas fields. There are also a couple of discoveries which are pending development with several other blocks awaiting the commencement of exploration activities. Thus, there is an appreciable presence of service companies in the country that are ready to tap into the available opportunities to supply the needed goods, works and services required in the sector.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

In order to provide a service in the oil and gas sector, a non-indigenous company **(NIC)** must form a joint venture with an indigenous Ghanaian company **(IGC)**. The IGC must have at least a 10% equity interest in the joint venture company.

However, the use of joint venture companies may not always be ideal for all kinds of projects. Accordingly, if the Petroleum Commission so considers, a NIC may be required to form a strategic alliance or channel partnership with an IGC to provide goods or services as an alternative to the formation of joint venture companies.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies?

Yes, there are compulsory local content requirements for oil and gas services companies in Ghana. The local content requirements applicable to contractors (as discussed in the response to Question 3(c) above) also apply to services companies.

What tax regime applies to oil and gas services companies?

The following tax regime applies to oil and gas service companies:

i. income tax at the rate of 25%;

ii. withholding tax at a rate of 15% for residents and 7.5% for non-residents;
iii. indirect taxes on the supply of goods and services - Value-added tax, National Health Insurance Levy, Ghana Education Trust Fund Levy, and Covid-19 Health Recovery Levy at a combined rate of 21%;

iv. Growth and Sustainability Levy at a rate of 5% of gross profits; and

v. Contributions to the local content fund at a rate of 1% of the contract sum.

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?

Before beginning activities in Ghana, oil and gas contractors must obtain an environmental permit from the Environmental Protection Agency **(EPA)** in respect of the proposed operations. This will require the contractor to conduct and submit an environmental impact assessment to the EPA. Following the grant of the permit, the contractor must comply with applicable law and all permit conditions, including the submission of periodic environmental management plans and reports.

Are there any consequences of a breach of environmental obligations for the rights holder?

Yes, there are consequences for breaching environmental obligations for the rights holder. Failure to obtain an environmental permit for a petroleum operation, conduct an environmental impact statement prior to the commencement of a petroleum operation or generally a contravention of the environmental regulations constitute an offence, and the right holder is liable on summary conviction to a fine not exceeding GHS 200 or imprisonment for a term not exceeding 1 year, or both, and in the case of a continuing offence to a further fine not exceeding GHS 20 for each day that the offence is continued.

Further to the above, a rights holder is strictly liable for any pollution damage that is caused or arising from its petroleum activities, and in the case of multiple rights holders, the liability is joint and several.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

The directors and officers of an entity that breaches environmental obligations are deemed to have committed the offence unless they can show that they exercised due diligence to prevent the offence or that the offence was committed without the knowledge, consent or connivance.[67]

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Yes, there are elaborate health and safety requirements applicable in the oil and gas industry in Ghana. Among other things, a rights holder must:

i. implement, maintain and update a management system to ensure compliance with the health and safety regulations;

ii. engaging the services of personnel competent to comply with health and safety regulations;

iii. prepare and annually update a health and safety plan; and

iv. prepare a safety case describing the petroleum facility, the risk and emergency preparedness, among other things;

v. ensure the proper maintenance of facilities for efficiency of use and

vi. carry out the necessary risk analysis to ensure the generation of a balanced and comprehensive possible picture of associated risks in the operations for the preparation of emergency preparedness response systems.

Which entity is responsible for the enforcement of health and safety regulations or obligations?

The Petroleum Commission is responsible for the enforcement of health and safety regulations.

Are there any consequences of a breach of these requirements for the rights holder?

Yes, there are consequences for violating health and safety requirements. Failure to comply with health and safety requirements may attract administrative fines for the rights holder.

There is an administrative penalty of GHS 600,000 for general non-compliance with health and safety regulations. Further, a person who (among other things) commences a petroleum activity without an appropriate health and safety approval or permit, fails to ensure that petroleum facilities do not meet applicable health and safety standards, or provides false information to the Petroleum Commission commits and offence and upon summary conviction is liable to a fine of not less than GHS 120,000 and not more than GHS 600,000. If the offence continues, the person may be liable to a fine of not more than GHS 12,000 for each additional day of the offence, or a term of imprisonment of not less than 1 year and not more than 3 years.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

Directors, officers and other persons responsible for the management of an entity that breaches health and safety regulations are deemed to have committed the offence unless they can show that they exercised due diligence to prevent the offence or that the offence was committed without the knowledge, consent or connivance.

DECOMMISSIONING

What are the decommissioning and abandonments requirements and obligations for oil and gas rights holders in your jurisdiction?

A rights holder must submit a decommissioning plan to the Minister no later than 2 years before the date on which the use of the petroleum facility to be decommissioned is expected to permanently cease operation or the petroleum agreement to which the decommissioning plan relates will expire. If a petroleum agreement is terminated before its expiration date, the decommissioning plan must be submitted as soon as practical and no later than 90 days following the termination.

A decommissioning plan must include a detailed strategy for the closure of operations and disposal of petroleum facilities, as well as the continued use of existing facilities in petroleum activities. It may also include plans for the removal of petroleum facilities for use in another petroleum facility or for a purpose other than petroleum usage, as well as plans for the entire or partial removal or abandonment of the facilities. It must include the information and evaluations required to assist the Minister in deciding on the disposal provisions in the decommissioning plan.

The Minister must consider the various interests involved when deciding whether to approve or reject a decommissioning plan, including the impact of the decision on local communities, agriculture, fisheries, and other affected interests, as well as the environmental, safety, technical, and economic consequences of the disposal alternatives. The Minister may then approve the decommissioning plan and establish a timeline for its implementation.

If the Minister disapproves of a decommissioning plan, the rights holder must be notified of the decision (with underlying reasons) in writing. The Minister must state in the notice whether a new or revised plan is required or whether certain conditions must be met before the decommissioning plan is approved.

Following approval of the decommissioning plan, a rights holder who implements a decommissioning plan must provide a report on the work completed to the Minister.

Are there any particular events or timelines that trigger decommissioning obligations?

Yes, please see the first paragraph of response to question above.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

Contractors in the oil and gas sector are subject to the following fiscal regime:

i. Royalties in respect of gross production, as prescribed in the petroleum agreement. The rate of royalty typically ranges from 4% to 12%;

ii. income tax (including tax on capital gains) at the rate of 35%;

iii. Indirect taxes on supply of goods and services - Value-added tax, National Health Insurance Levy, Ghana Education Trust Fund Levy, and Covid-19 Health Recovery Levy at a combined rate of 21%;

iv. Growth and Sustainability Levy at a rate of 1% of gross production;

v. Emissions Levy at a flat rate of GHS 100 (approx. USD 8.22) per tonne of carbon dioxide equivalent emissions per month;

vi. Annual surface rentals or acreage fees ranging from US$150 – US$600 per sq. km for offshore operations and US$225- US$900 for onshore operations;

vii. bonus payments as agreed under the petroleum agreement;

vii. additional oil entitlement of the State at an after-tax inflation-adjusted rate of return as computed in the prescribed manner; and

ix. contributions to the local content fund at the agreed rate under the petroleum agreement.

Are there any tax incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

Other than the exemption from value-added tax in respect of the supply of machinery and parts of machinery specifically designed for use in petroleum operations as specified in the petroleum list, there are no general tax incentives available in the oil and gas sector. Contractors seeking particular exemptions must apply and obtain these exemptions as part of the negotiation of their petroleum agreements.

What is the procedure for obtaining any applicable incentives and exemptions?

Under the new Exemptions Act, 2022 (Act 1083), there are two regimes of exemptions in the forms of (i) general incentives for industry-specific or programme-specific investments, and

(ii) specially negotiated exemptions for strategic investments in priority sectors of the economy.

The general exemptions regime applicable to industry-specific or programme-specific investments are to be administered by regulations issued by the Minister on the recommendation of the relevant sector minister and following Cabinet's approval. If the general exemptions include exemptions on customs duties and customs taxes, the list of items subject to the exemptions and the applicable concessional rates must be provided in the regulations. For businesses that access the general tax incentives, the State may acquire a reciprocal carried interest in the business. In such instances, the regulations must specify the particulars of the carried interest to be acquired by the State.

Regarding special exemptions for strategic investments in priority sectors, the State may negotiate with an investor to grant such specially negotiated exemptions on condition that the State takes a commensurate equity interest in the investment project. An investor who cedes equity interest in a project in consideration for a special exemption shall have an unqualified right to re-acquire the equity interest at market price.
An application to invest in a priority sector of the economy and to obtain special exemptions may be made to the GIPC stating the cost of the investment and the exemptions required. The GIPC shall forward the application to the Minister within 5 days following a determination that the investment is within a priority sector of the economy.

Upon receipt of the forwarded application, the Minister shall commence negotiations with the applicant to agree on the (i) cost details of the investment, (ii) scope and details of the exemptions to be granted, and (iii) the commensurate equity interest to be acquired by the State in consideration for the revenue forgone in granting the exemptions. Following the conclusion of negotiations, the Minister shall procure the requisite approvals from Cabinet and Parliament for the agreement covering the exemptions before signing the agreement.

In seeking Parliament's approval, the draft agreement covering the exemptions shall be accompanied by information on the following:

a. a detailed assessment of the value of the anticipated exemptions contained in the agreement;
b. the list of items and taxes to which the exemptions are applicable;
c. limit on the total value of the exemptions to be granted under that contract;
d. a time limit on the exemption to ensure that the duration of the exemption does not exceed the term of the agreement;
e. the impact of the exemption on programmed revenue;
f. details of the beneficial ownership of the entities involved in the agreement; and
g. a value for money assessment report.

Parliament may vary the exemptions covered in the draft agreement. Upon any variation of the exemptions by Parliament, the Minister must, within 14 days from the date of being notified of the variation, notify the counterparty of the agreement covering the exemptions.

STABILISATION RIGHTS

Are there any forms of stabilisation rights granted to investors in the oil and gas sector?

Yes, varying forms of stabilisation have been granted to investors in the oil and gas industry in Ghana. While the early petroleum agreements entered into between Ghana and contractors provide for "freezing stabilisation" rights that insulate or freeze the petroleum agreements against adverse changes in law, recent petroleum agreements instead provide for economic rebalancing agreements which entitle the contractors to seek a renegotiation of the terms of the petroleum agreement to restore the economic, fiscal and financial equilibrium following any adverse changes in applicable law.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

No, there is no threshold of investment required to be eligible for a stabilisation agreement as a contractor in the oil and gas industry. Given that petroleum operations involve significant risks and require the investment of substantial capital, all contractors are granted some form of stabilisation to attract the needed investments in the sector.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

The government and its agencies generally comply with the terms of stabilisation agreements, although there are certain sticky areas where the government and its agencies have often disagreed in respect of the scope and effect of stabilisation clauses. These matters are discussed in the response to Question 12(d) below.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

Yes, there are common issues that have arisen for investors/contractors in the industry. These issues have often related to the applicability of certain taxes or the assessment of certain taxes allegedly in breach of the stabilisation rights of contractors. A case in point is the ongoing actions at international arbitration against the government of Ghana by Tullow Ghana Limited.

Other issues have included the conditions typically imposed on the transfer/assignment of the interests of contractors under petroleum agreements. The concern has often been whether the conditions imposed for the approval of transfers/

assignments of interests based on prevailing laws are in breach of contractor stabilisation rights.

DISPUTES

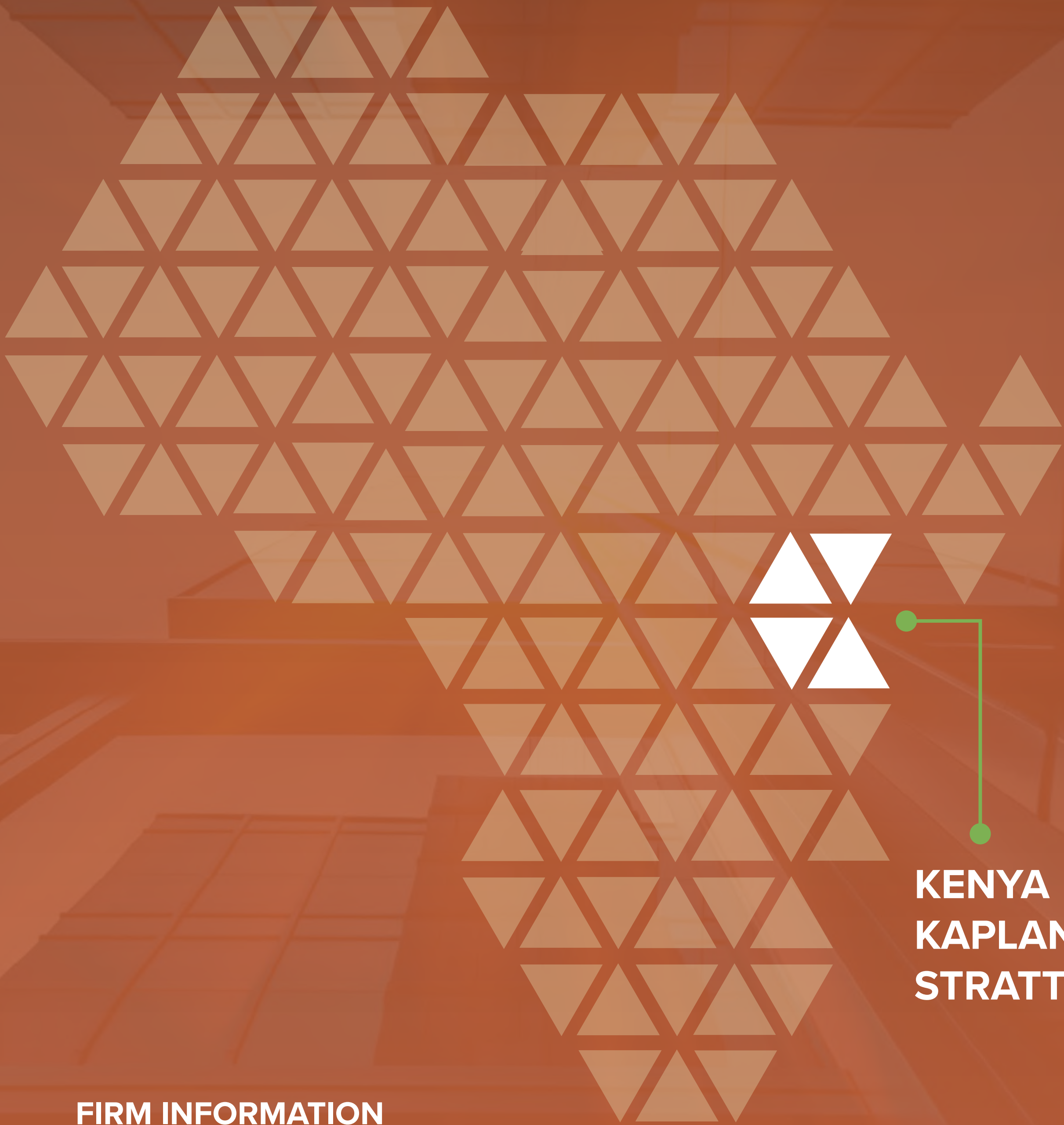
Are there any statutorily prescribed procedures for the resolution of disputes?

In respect of disputes borne out of the Petroleum Commission's regulation, the aggrieved contractor may lodge a written complaint with the Minister within 30 days following any adverse decision made against the rights holder by the Petroleum Commission. The Minister shall then hear and determine the complaint within 30 days of receipt of the complaint. However, if the Minister does not make any determination within the 30 days or the contractor is still aggrieved following the Minister's determination, the rights holder may apply to the High Court for a review of the Petroleum Commission.

In respect of disputes borne out of the performance of obligations under the petroleum agreement, however, there are no statutorily prescribed ways for resolving such disputes. The parties are, therefore, free to adopt any applicable means of dispute resolution.

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

Further to the response in (a) above, in respect of disputes borne out of the petroleum agreement, the applicable dispute resolution mechanism is provided in the petroleum agreement. Typically, the methods employed are negotiation/consultation among senior management personnel, which if unsuccessful is followed by expert resolution or international arbitration.



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KAPLAN & STRATTON

FIRM INFORMATION

Website address : **www.kaplanstratton.com**
Languages spoken : **English**
Telephone : +254 20 2841000
Address : Williamson House, 4th Ngong Avenue, Nairobi
Contact : Ken Kamaitha
Email : kkamaitha@kapstrat.com

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

Key legislation regulating the oil and gas sector in Kenya includes:
- The Constitution of Kenya 2012 (**Constitution**);
- The Petroleum Act, 2019 (**Petroleum Act**) and the regulations made under the Act; and
- The Energy Act 2019 (**Energy Act**).

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

Key institutions involved in regulating the oil and gas sector in Kenya are:
- Ministry of Energy and Petroleum (**the Ministry**): The Cabinet Secretary of the Ministry (**the Cabinet Secretary**) has the primary role of administering the Petroleum Act and the regulations made under the Act. The powers and functions of the Cabinet Secretary include:
- reviewing, negotiating, entering into or revoking Petroleum Agreements (defined below) and applications for Petroleum Agreements;
- generally overseeing upstream petroleum operations carried out under a Petroleum Agreement (defined below);
- approval of proposed exploration activities and field development plans;
- developing and monitoring the implementation of a national policy on petroleum operations and a national petroleum strategic plan.
- The Energy and Petroleum Regulatory Authority (**EPRA**): EPRA is established under the Energy Act and its mandate includes:
- regulating, monitoring and supervising upstream operations;
- regulating the importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil;
- issuing operational permits and non-exclusive permits in accordance with the Petroleum Act;
- receiving, reviewing and granting applications for a non-exclusive exploration;
- setting , reviewing and approving contracts, tariffs and charges for common user upstream petroleum facilities;
- assessing field development plans and making recommendations to the Cabinet Secretary on approval of such plans;
- regulating contracts on upstream petroleum operations which are not specifically provided for under the Petroleum Act;
- formulating, enforcing and reviewing environmental, health and safety standards for the upstream petroleum sector and enforcing any local content requirements;
- developing guidelines in relation to the implementation of international agreements that have been ratified by Kenya which affect the upstream petroleum sector in Kenya;
- coordinating the development of upstream petroleum infrastructure and promoting capacity building in upstream operations;
- collecting, maintaining, managing and providing data on the upstream petroleum sector; and
- investigating complaints or disputes arising from petroleum operations.

EPRA is also vested with powers to:
- set, review and approve contracts, tariffs and charges for common user petroleum logistics facilities and petroleum products;
- search relevant premises, issue orders in furtherance of its roles under the Petroleum Act, impose sanctions to secure compliance with orders, carry out analyses of samples of petroleum or other substances in relation to upstream operations on suspicion of an offence and to inspect and make copies of documents relating to any upstream operations.
- The National Upstream Petroleum Advisory Committee (**Advisory Committee**): The Advisory Committee is established under the Petroleum Act and its primary functions include advising the Cabinet Secretary on upstream petroleum operations and during negotiation of, entering into, suspension, revocation or termination of Petroleum Agreements.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

Oil and gas resources existing in natural conditions in strata lying within the territory of Kenya and its continental shelf are vested in the Government of Kenya (**GoK**) in trust for the people of Kenya.
The Cabinet Secretary has the power to divide Kenya and its continental shelf into numbered areas defined by specific geographical coordinates which are referred to as **"blocks"**.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

- **Non-Exclusive Exploration Permit (Exploration Permit)**: This permit grants the holder the right to conduct reconnaissance and general investigations of a specific geographical area which includes acquisition of geological, geochemical and geophysical data and may allow drilling to a depth prescribed by EPRA. For the avoidance of doubt, the permit does not confer any right to drill wells for production.
There are no specific restrictions on who may apply for an Exploration Permit.

- **Petroleum Agreements**: A person intending to acquire rights to undertake upstream petroleum operations (including exploration and production) must enter into an agreement, license, contract or other arrangement with the GoK pursuant to which such rights would be granted subject to terms and conditions agreed with the GoK (**Petroleum Agreement(s)**). Production sharing contracts are the common type of Petroleum Agreements used in Kenya.

  Petroleum Agreements must be negotiated and awarded in a form prescribed under the Petroleum Act which is a model production sharing contract (**the Model PSC**).

  An applicant for a Petroleum Agreement must be a company incorporated in Kenya and must have the financial, technical and professional capacity necessary to fulfil a contractor's obligations under the relevant Petroleum Agreement.
- **Operational Permits**: A contractor (that is, a person who has entered into a Petroleum Agreement) would be required to obtain a specific operational permit from EPRA to conduct upstream petroleum operations at each well/facility including:
  - drilling a well;
  - developing and producing petroleum;
  - constructing petroleum gathering systems in the field;
  - building a crude oil storage facility;
  - plugging or abandoning an individual well;
  - operating an underground injection control well;
  - converting an individual well to an underground injection control well;
  - decommissioning or abandoning an upstream petroleum facility;
  - developing, building, constructing or operating a gas processing facility; or
  - remediating and reclaiming upon the abandonment of a well or facility.

  Comprehensive regulations relating to the application and award of operational permits are yet to be enacted.

Please provide an overview of the procedure for obtaining such exploration and production rights.

- **Process for obtaining an Exploration Permit**: An application for an Exploration Permit should be made to EPRA in prescribed form and accompanied by a prescribed fee. The form and fees are yet to be prescribed. However, the Cabinet Secretary has the power to call for any additional information as deemed necessary to assess the suitability of a grant of an Exploration Permit.
- **Process for entering into Petroleum Agreements**: A Petroleum Agreement may be entered into either after the conclusion of a bidding process or following direct negotiations which is permissible if no bids are received or where the bids received do not satisfy the minimum criteria for execution of a Petroleum Agreement or where there is insufficient data in relation to the relevant block.
- **Ratification of Petroleum Agreements**: Where a commercial field is established and a field development plan for the commercial field is approved by the Cabinet Secretary, the relevant Petroleum Agreement would be subject to ratification by the Parliament of Kenya in order to be effective. The Cabinet Secretary is required to submit the Petroleum Agreement (together with the relevant field development plan) to Parliament for ratification within 30 days after approval of the field development plan and Parliament would be required to make a decision on whether to ratify the Petroleum Agreement within 60 days thereafter. A Petroleum Agreement would be deemed ratified if Parliament fails to make a decision on ratification within 90 days.
- **Operational Permits**: Applications for operational permits should be made to EPRA. There is currently no prescribed form of application. Granting of operational permits would be subject to a process of public participation which would include EPRA issuing 21 working days' notice to the affected community informing them about the intended decision on an operational permit.

Are there any fees and charges applicable to obtaining these rights?

- **Application fees for Exploration Permits and Operational Permits**: The Cabinet Secretary may from time to time prescribe application fees to be paid on application for an Exploration Permit or Operational Permit.
- **Petroleum Agreements**: The following costs/payments would be incurred in relation to entering into Petroleum Agreements:
  - Signature Bonus: Before execution of the Petroleum Agreement, an applicant would be required to pay to the government a single, non-recoverable lump sum payment referred to as a signature bonus.
  - Annual Fees: A contractor who has entered into a Petroleum Agreement is required to pay to the government annual fees prescribed under the Petroleum Agreement and regulations from time to time. Such fees would include surface fees, training fees and such other fees as would be set out in the Petroleum Agreement. Annual fees are due immediately upon the grant of a Petroleum Agreement and each anniversary thereafter.

  In addition, a contractor must also provide performance security before the commencement of the initial exploration period under a Petroleum Agreement. The Model PSC requires performance security in the form of a 50% bank guarantee and a 50% parent company guarantee in a form acceptable to the Cabinet Secretary.

What is the duration of the exploration and production rights?

The Cabinet Secretary and EPRA have the discretion to determine the duration under the Petroleum Act to determine the duration of rights issued.

However under the Model PSC:

- the initial exploration period (which is usually 2-3 years) may be extended twice and a third extension not exceeding 120 days may be granted to enable the contractor to complete the drilling and testing of an exploratory well; and
- upon confirmation of commercial discovery and approval

by the Cabinet Secretary of a development plan for any such discovery, the term of the agreement would continue for 25 years from the date that the development plan is adopted. The period may be extended for a further term of 10 years.

Are the exploration and production rights renewable? What are the renewal processes?

The Cabinet Secretary and EPRA have the discretion to determine the term and renewal of Explorations Permits, Operational Permits and Petroleum Agreements.
However, please refer to the comments at paragraph e. above relating to the extension of exploration and production periods contemplated under the Model PSC.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

Petroleum Agreements would be modelled on the Model PSC which contains provisions for the GoK to have a carried "Participation Interest" in upstream petroleum operations in any developed area up to a negotiated percentage. The GoK may participate directly or through the National Oil Corporation, a government owned entity.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

No. There are no local shareholding participation requirements in relation to the acquisition of exploration and production rights.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

There are no special rules or restrictions for foreign applicants.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

Any person carrying out any undertaking or works under the Petroleum Act is required to (i) give priority to services provided and goods manufactured in Kenya and (ii) ensure priority is given to the employment or engagement of qualified and skilled Kenyans at all levels of the value chain.
Before engaging in petroleum operations, a contractor must prepare a long term and annual local content plan which should be approved by EPRA. The local content plan must as a minimum address the following aspects:
- employment and training;
- research and development;
- technology transfer;
- industrial attachment and apprenticeship;
- legal services;
- financial services;
- insurance services;
- succession plans for positions not held by Kenyans;
- consultancy services;
- construction services;
- hospitality services;
- transport services;
- security services;
- clearing and forwarding services;
- Inspection services; and
- other goods, works and services as may be prescribed in the regulations to the Petroleum Act.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

Any requirements, consents, or restrictions for the transfer or assignment of exploration and production rights?

Transfer of an interest in a Petroleum Agreement, whether direct or indirect, may only be done with the written permission of the Cabinet Secretary.
Under the Model PSC, the consent (permission) of the Cabinet Secretary must be granted or refused within 90 days and the Cabinet Secretary may require the proposed transferee to provide a performance guarantee in respect of the contractor's obligations.
All approvals for transfer or assignment of rights under a Petroleum Agreement must also be notified to the Kenya Revenue Authority within 20 days after the approval.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

Yes. A holder of an interest in a Petroleum Agreement must notify the Cabinet Secretary when there is any change in the ownership or control of any company or any joint venture company with an interest in the Petroleum Agreement.
Additionally, the holder of the interest and the new owner must provide a written commitment to the Cabinet Secretary that they shall continue to honour obligations set out in the Petroleum Agreement.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

The primary conditions to be met before the approval is granted by the Cabinet Secretary to transfer an interest in a Petroleum Agreement include:

- the application for transfer has been made in the prescribed form and the contractor is in compliance with the provisions of the Petroleum Act, the terms and conditions of the relevant Petroleum Agreement and any other written law;
- the transferee has the financial and technical capacity to meet the contractor's obligations; and
- all taxes payable with respect to transfer transaction have been assessed.

The approval to transfer the interest shall not be unreasonably withheld unless there is reason to believe that the transfer of that interest shall be against public interest or safety.

Are rights holders allowed to create security over their exploration and production rights?

Yes, subject to the consent of the Cabinet Secretary.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations?

There are no statutorily prescribed timelines but Petroleum Agreements have in the past provided for an initial exploration period of 3 years subject to two renewal periods of 2 years each.

Are there any prescribed minimum work and expenditure obligations for exploration operations?

No. These would be agreed with the contractor under a Petroleum Agreement.

Are there any compulsory relinquishment requirements?

The Petroleum Act requires that relinquishing of all or part of a block must be done in accordance with the terms of a Petroleum Agreement.

The Model PSC requires relinquishing of 25% of the net area (contract area less the development areas) during the initial exploration period and the first additional exploration period respectively followed by the entire net area at the end of the second additional exploration period. Further, voluntary termination of a production area may be done subject to a contractor issuing one year's notice of the surrender. Other contract areas may be voluntarily surrendered by the contractor issuing 30 days written notice.

What are the conditions for transitioning from exploration to development and production?

A holder of a non-exclusive exploration permit who intends to undertake development and production would be required to enter into a Petroleum Agreement through a bidding process or direct negotiations with the Cabinet Secretary.

What are the conditions for commencement of production operations?

There are no prescribed conditions for commencement of production operations. We expect these to be a commercial term to be agreed in the Petroleum Agreement.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

There are no specific restrictions relating to refining of crude oil produced in Kenya.

What are the requirements and restrictions for the export of oil and gas produced in your jurisdiction? Please specify any applicable domestic supply requirements.

The Model PSC contains provisions that would require a contractor to supply in priority crude oil and/or natural gas for domestic consumption in Kenya and to sell to the GoK a portion of the contractor's share of production which is necessary to satisfy the domestic supply requirement. The domestic supply requirements would be notified to the contractor by the Cabinet Secretary on an annual basis.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

There have been some setbacks in the upstream oil sector that have affected the development of commercially viable oilfields following the discovery of commercial deposits in Turkana and that also impacted the growth of the oil and gas services industry. However, the GoK is working towards promoting production and it is expected that the oilfield services industry will recover at that point.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

No specific entry restrictions under the Petroleum Act.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies?

IGenerally no, unless such oil service companies are carrying on regulated services such as construction in which case compulsory local content rules under other laws governing the regulated services would apply.

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?

The proponent of a project to undertake exploration or the production of petroleum must first undertake an environmental impact assessment study and file a report with the National Environmental Management Authority (**NEMA**).
The applicant will then be issued with an Environmental Impact Assessment licence (**EIA Licence**) before commencement of any works once NEMA is satisfied as to the adequacy of the study undertaken following a review of the report filed.
The EIA Licence normally sets out conditions to be complied with by the contractor before, during and after exploration and production of oil and gas in the proposed area.

Are there any consequences of a breach of environmental obligations for the rights holder?

Yes. NEMA has the power to cancel, revoke or suspend an EIA Licence where the licence holder contravenes the conditions attached to the licence. Further, failure to obtain an EIA Licence is an offence and, on conviction, a person be liable to imprisonment for up to 24 months and/or a fine of up to KES 2,000,000 (approx. USD 13,240).
Additionally, the Petroleum Act provides that the contractor will be held liable for damage from pollution of the environment without regard to fault from whichever source related to the upstream petroleum operations of the contractor when the damage occurs in Kenya or within its territorial waters.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

Yes. directors and/or officers of a corporate body would be normally held personally liable if they had knowledge of the commission of the offence and have not exercised due diligence, efficiency and economy to ensure compliance with the statutory provisions.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Yes. Upstream petroleum operations must be conducted in a manner to that enables a high level of safety in accordance with technological advancement, best petroleum industry practices and in compliance with the provisions of the Occupational Safety and Health Act (**OSHA**).
The OSHA provides that any person who occupies or uses any premises as a workplace is required to register such premises with the Directorate of Occupational Safety and Health.
Additionally, under the Petroleum Act, the contractor is required to take all reasonable steps to secure the safety, health and welfare of persons engaged in all its operations in and about the contract area.

Which entity is responsible for the enforcement of health and safety regulations or obligations?

The Directorate of Occupational Safety and Health Services.

Are there any consequences of a breach of these requirements for the rights holder?

Yes. Breach of the statutory provisions could result in either imprisonment and/or monetary penalties on the rights holder.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

Yes. Directors and/or officers of a corporate body would be liable if it is proved that they had knowledge of the offence and failed to exercise due diligence, efficiency and economy to ensure compliance.

DECOMMISSIONING

What are the decommissioning and abandonments requirements and obligations for oil and gas rights holders in your jurisdiction?

A contractor must apply for and be granted the licence to decommission/abandon an upstream petroleum facility.

Are there any particular events or timelines that trigger decommissioning obligations?

The specific terms on the events and/or timelines that trigger decommissioning obligations are contractual terms to be agreed in the Petroleum Agreement.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

The taxes levied in the oil and gas sector in Kenya are set out in the 9th Schedule of the Kenyan Income Tax Act. These include:

- **Corporate income tax**-The corporate income tax for resident companies is 30% and 37.5% for foreign companies registered in Kenya.
- **Withholding tax**: The withholding tax applicable on payments to non-residents in the oil and gas sector are as follows:

PAYMENT	WITHHOLDING TAX RATE
Dividends	10%
Interest	15%
Natural resource income	20%
Management of professional fees	10%

- **VAT**: The standard rate of 16% is applicable.
- **Capital gains**: Gains arising on the disposal of all qualifying assets by oil and gas companies (except share and license interest disposals) are subject to capital gains tax at the rate of 15%.
- Training fees and surface fees prescribed under a Petroleum Agreement and/or regulations.

Are there any tax incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

- **Allowable deductions**: The 9th Schedule of the Income Tax Act provides for specific deductions against oil and gas income in determining the taxable income. These include exploration costs, development expenditure and operating costs.
- **VAT**: Kenya's VAT regime provides for exemption from VAT with respect to taxable goods (Except motor vehicles) imported or purchased for direct and exclusive use in exploration upon recommendation by the Cabinet Secretary.
- **Customs Duty**: All items except motor vehicles imported by oil and gas companies for direct use in oil and gas exploration and development are exempt from customs duty upon recommendation by a competent authority (The Ministry of Energy and Petroleum)

What is the procedure for obtaining any applicable incentives and exemptions?

These may be negotiated under the Petroleum Agreement and the relevant approvals obtained by application to the Cabinet Secretary as applicable.

STABILISATION RIGHTS

Are there any forms of stabilisation rights granted to investors in the oil and gas sector?

The Model Form PSC states that 'if after the effective date of this contract the economic benefits of a party are substantially affected by the promulgation of new laws and regulations, or of any amendments to the applicable laws and regulations of Kenya, the parties shall agree to make the necessary adjustments to the relevant provisions of this contract, observing the principle of mutual economic benefits of the parties'.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

No.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

The obligations would be binding on the GoK when the Petroleum Agreement is entered into.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

We are not aware of any relevant issues that have arisen recently.

DISPUTES

Are there any statutorily prescribed procedures for the resolution of disputes?

Disputes between parties to a Petroleum Agreement must first be resolved through alternative dispute resolution mechanisms in the first instance as may be provided in the Petroleum Agreement. The Model Form PSC provides for disputes that cannot be settled amicably to be determined by arbitration under the UNCITRAL Rules; such arbitration to be held in Nairobi, Kenya.

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

Not applicable.

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I&I LAW FIRM

FIRM INFORMATION

Website address : **https://www.iilawfirm.ma/**
Languages spoken : **Arabic, French, English**
Telephone : (+212)05.22.43.36.60
Address : 3, Av. 2Mars, Rés. Marwa, 4ème étage 20490 Casablanca, Maroc
Contact : Ghiyta IRAQI
Email : contact@iilawfirm.ma / g.iraqi@iilawfirm.ma

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

1. Main regulation

The laws that regulate the oil and gas sector are:

Law No. 21-90 on the exploration and exploitation of hydrocarbon deposits, promulgated by Dahir No. 1-91-118 of 27 Ramadan 1412 (April 1, 1992) published in the Official Gazette No. 4146 of 11 Chaoual 1412 (April 15, 1992) amended and supplemented by Law No. 27-99 promulgated by Dahir No. 1-99-340 of 9 Kaada 1420 (February 15, 2000), published in the Official Gazette No. 4778 of 9 Hija 1420 (March 16, 2000) (together the Oil and Gas Code).

Decree No. 2-93-786 of 18 Jumada I 1414 (3 November 1993) for the implementation of Law No. 21-90 on the exploration and exploitation of hydrocarbon deposits.

2. Other regulations

For the Oil & Gas Industry

- Law on the Downstream Petroleum Sector (Dahir Law No. 1-72-255 of 18 Moharrem 1393 (22 February 1973)

- Decree implementing the Law on the Downstream Petroleum Sector (Decree No. 2-72-513 of 3 Rebia I 1393 (7 April 1973))

- Decree No. 2-95-699 of 4 Moharrem 1417 (22 May 1996), which repealed the Decree of 7 April 1973, pursuant to the Act of 22 February 1973.

Regulation of Gas Pressure Vessels

- Dahir of 12 January 1955 (Laying down regulations on gas pressure vessels);
- Viziriel Decree Of 12 January 1955 (fixing the fees levied on the occasion of the testing of gas pressure vessels);
- Decree of the Director of Industrial Production and Mines of 13 January 1955 (Regulating the construction and use of gas pressure vessels);
- Order of the Director Of Industrial Production and Mines of 14 January 1955;
- Order of the Director Of Industrial Production and Mines of 15 January 1955 (Regulating Acetylene Generators);
- Decree of the Director of Industrial Production and Mines of 17 December 1953 (regulating the use of fusion edge welding on iron or steel in the construction and repair of steam engines on land);
- Order of the Director of Industrial Production and Mines of 29 December 1953 (relating to certain storage vessels for liquefied Hydrocarbons).

Regulations common to the Ministry of Mines, Public Works and the Ministry of Transport

- Dahir of 3 chaoual 1332 (25 August 1914) regulating unhealthy, inconvenient or dangerous establishments;

- Dahir of 5 Rejeb 1346 (30 December 1927) on the transport and handling of hydrocarbons and liquid fuels. - Decree of 31 August 1926 laying down general regulations for the transport and handling of hydrocarbons and liquid fuels on land roads other than railways and on inland waterways, and for the handling of these liquids in seaports. (Official Journal of the French Republic of 3 September 1926, page 9926) (Official Gazette No. 796 of 24/01/1928 (24 January 1928) ;

- Dahir of 29 Hija 1356 (2 March 1938) regulating the handling and transport by land of dangerous goods, combustible materials, flammable liquids (other than hydrocarbons and liquid fuels), powders, explosives, ammunition and fireworks, compressed, liquefied, solidified and dissolved gases, poisonous, caustic and corrosive substances and toxic or foul-smelling products (Official Bulletin No. 1340 of 01/07/1938 (1 July 1938);

- Order of the Director of Public Works of 03/12/1947 (3 December 1947) relating to the safety measures to be applied in seaports with regard to hazardous materials other than hydrocarbons and liquid fuels (Official Gazette No. 1834 of 19/12/1947 (19 December 1947)).

Which regulatory bodies administer applicable laws and regulations? What are their powers and functions?

A. Organizations

In Morocco, the Oil and Gas sector is regulated by several bodies:

- The National Office of Hydrocarbons and Mines (ONHYM) plays a key role in the exploration and production of hydrocarbons.

- The Ministry of Energy Transition and Sustainable Development oversees the entire sector.

These two organizations work together to ensure compliance with applicable oil and gas laws and regulations.

In addition, the Ministry of Transport and Logistics ensures that the rules on the transportation of dangerous goods are respected. Also, the Ministry of the Interior with these judicial police officers who are present in all the construction sites in order to check compliance with all the standards in terms of safety, compliance with oil agreements, respect for the environment and much more.

B. Powers and Duties

1. The Ministry of Energy Transition and Sustainable Development

The Department of Energy Transition is responsible for:
- the development and implementation of government policy in the fields of energy, mining and geology;
- the supervision of the public companies and establishments under its jurisdiction as well as the control of the other sectors under its authority, in application of the laws and regulations in force;
- ensuring the proper management and development of geological, energy and mining assets;
- implementing guidelines relating to geological research and prospecting of the country's soil and subsoil resources;
- taking the necessary options and measures to ensure the security of energy supplies, expand access to commercial energy services for rural and urban populations, and ensure the safety of people and energy and mining facilities;
- implementing the strategic storage policy and undertake emergency measures aimed at security of supply in the event of a crisis;
- ensuring that a strategic and forward-looking vision is constantly in place, in particular for harmonious institutional development, continuous adaptation and the development of sectors in the energy, mining and geological sectors;
- ensuring the organization and functioning of the electricity, gas and oil markets, as part of the consolidation of a liberalized energy market integrated into its regional environment, in particular by strengthening trade through interconnections, in order to enable the country to play an active role in the regional and international development dynamics of the sector;
- leading actions aimed at strengthening exchanges and consultation with all administrations, organizations and partners concerned with the development of the energy and mining sectors;
- establishing the databases and information necessary for the preparation of economic and strategic analyses and impact studies, through the establishment of an energy and mining observation and planning system;
- ensuring the promotion of national engineering in the energy, mining and geological fields, as well as the training of the required human capacities and the preparation of the necessary management structures.

2. National Office of Hydrocarbons and Mines (ONHYM)

Under the supervision of the Ministry of Energy Transition and Sustainable Development, ONHYM is responsible for promoting the exploration and exploitation of hydrocarbons, the management of exploitation and production contracts, as well as the collection and analysis of geological data. ONHYM is an autonomous and financially independent public institution.
ONHYM's strategy focuses on the following main axes: increasing the level of oil and mineral exploration in Morocco, strengthening and opening up to the world market and developing partnerships with foreign investors as an integral part of ONHYM's policy to promote the country's oil and mineral wealth.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

It is the State that holds the title to oil and gas resources in Morocco, specifically the Ministry of Energy Transition and Sustainable Development.

What rights are granted to undertake exploration and production operations and who is eligible to acquire such rights in your jurisdiction?

The rights granted to undertake exploration and production operations are the exploration permit and/or the exploitation concession. These are rights in rem of limited duration. It is possible to apply for an exploitation concession after finding a deposit in the area covered by the exploration permit.

Only legal entities are allowed to acquire such rights.

Please provide an overview of the procedure for obtaining these exploration and production rights.

A. Procedure for obtaining a research permit

Make the request to the Ministry of Energy Transition and Sustainable Development: The application must be accompanied by information relevant to determining the applicant's technical and financial capacity. It must indicate:

a. The name of the applicant(s) legal person(s), its articles of association, its registered office;

b. The names of the chairman, the members of the board of directors, for public limited companies;

c. The names of the managers and members of the supervisory board for partnerships limited by shares and limited liability companies;

d. The names of all partners, for general partnerships and for limited liability companies without a supervisory board;

e. The names of the directors with the corporate signature for all companies;

f. In the case of an application submitted in the name of a company in formation, it must mention it by indicating all the known information on the condition of the definitive holder;

g. The name and address of the applicant's representative or representative in Morocco;

h. In the event that the application for authorisation for recognition is submitted by a natural person, the information provided above shall be replaced by the profession, nationality and domicile of the applicant and, if applicable, of his or her representative or representative in Morocco;

i. Reconnaissance authorizations or research permits, whether or not they have expired, from which they have already benefited;

j. The precise coordinates of the perimeter of the reconnaissance authorization or the research permit sought, accompanied by an extract from a topographic map at a scale of 1:250,000 or at any other suitable scale indicating the limits of the perimeter by lines oriented from north to south and from east to west and deriving from the Lambert or geographic coordinate system;

For maritime permits, one of the limits may be the course of the Moroccan coast.

If the area delimited by the perimeter is in a maritime zone, the extract from the above-mentioned chart shall be replaced by a hydrographic chart specifying the limits of the marine perimeter in question and the information enabling the feasibility of carrying out the proposed works to be assessed (the Card).

The Card must be provided in three (3) copies.

k. The general program and the timing of the work that the applicant plans to carry out during the different periods of the exploration permit, as well as the minimum financial effort that he undertakes to devote to the execution of this work.

In the case of research permits, the application must indicate how the total period of validity of the permit is divided into successive periods, specifying, for each period, the minimum programme of work that the applicant undertakes to carry out as well as the corresponding minimum financial efforts.

In the event that the request is made by an agent or representative, the latter must provide the documents accrediting him and proving his identity.

- Accompany the request with a receipt of payment to the general treasury, of the institution fees in the amount of 1000 dirhams;

- The exploration permit shall be granted within sixty (60) days of the date of submission of the application, by order of the Minister of Energy, notified to the applicant and published in the "Official Gazette".

B. Procedure for obtaining the operating concession

The application for a concession must be submitted to the Ministry of Energy no later than three (3) months before the expiry of the period of validity of the exploration permit under which it is submitted.

It must indicate:

- The same information required to obtain a research permit in paragraphs a, b, b, c, d, e, f, g, i etc.

- As well as the exploration permit, that gave rise to the discovery of hydrocarbons and under which the application is made.

  The application shall be entered on the date of submission in a special register kept at the Ministry of Energy.

- The application shall be accompanied by the following documents:

  - a map in triplicate at a scale of 1:10,000 showing the boundaries of the concession applied for as well as a map indicating in particular the work and drilling carried out;
  - a technical report detailing the research and assessment work carried out, including the studies carried out and the results demonstrating the existence and importance of the hydrocarbon deposit for the exploitation of which the concession application is made;
  - the programme of development work to be carried out by the applicant as well as the corresponding timetable for the commercial production of the deposit;
  - an economic and commercial study relating to the exploitation of the discovered deposit.

- A receipt for the filing of the application shall be given to the applicant and a notice shall be published in the press for five (5) consecutive days, within thirty (30) days of such registration.

Are there any fees and charges applicable to obtaining these rights?

Any legal person, other than a State body, must pay to the State an institution fee for any application for a research permit and its extension, which amounts to 1000 dirhams (100 USD approx.) and is paid to the general treasury.

The holder or, as the case may be, each of the co-holders of an exploitation concession must pay to the State, in accordance with the scales, rates and procedures laid down by regulation, an annual concession fee on its share of the production of hydrocarbons from the concession, payable in accordance with the provisions of the petroleum agreements, either in cash or in kind, either partly in kind and partly in cash. For the calculation of the concession fee, the quantities of hydrocarbons consumed within the perimeter of the concession for the purposes of direct exploitation or assisted exploitation of the deposit shall not be taken into consideration.

How long are exploration and production rights?

For the research permit, the total validity period may not exceed eight (8) years.

The period of validity of an operating concession may not exceed twenty-five (25) years.

Are exploration and production rights renewable? What are the renewal processes?

For the research permit

The research permit is renewable and has an initial period, possibly followed by one or two (2) successive additional periods when the permit holder has fulfilled the obligations to which he was bound. After 3 years, the research permit may be subject to a request for renewal for an additional period of 4 years.
Any request for an additional period during the period of validity of the exploration permit must be submitted to the Ministry of Energy no later than two (2) months before the expiry of the current period. Only applications submitted against receipt are admitted.

The applicant must accompany the request with the information referred to in paragraphs a, b, b, d, e, f, g, mentioned above and designate the delineated perimeter(s) and the applicant holder to be retained.

The application must also be accompanied by:

- a detailed memorandum indicating the work already carried out, its results, the expenditure already made under the commitments made, specifying the extent to which the objectives indicated in the initial application have been achieved or modified and giving reasons for the choice of the perimeter or perimeters that the contractor requests to be retained;

- a map at a scale of 1:50,000 or any other suitable scale in triplicate, on which the said perimeters are indicated;

- a programme of works which the contractor undertakes to carry out during the period requested, indicating the timetable for the work and the minimum financial effort corresponding to its execution.

For the operating concession

Only one exceptional extension, which may not exceed ten (10) years, may be granted by an administrative act, if justified by the rational and economic exploitation of the deposit.

The application for extension must include the same information as that provided for the application for the concession, but must be updated.

The concessionaire must demonstrate the existence of hydrocarbon reserves justifying the extension and provide the envisaged production programme and any additional works.

The extension is granted by decree issued on the proposal of the Minister for Energy.

Does the State have a direct or indirect right or interest in exploration, development and production operations?

The granting of exploration permits is subject to the conclusion of a petroleum agreement with the State and it shall be stipulated in this agreement that the State shall hold a stake in the exploration permit and the exploitation concession, the stake may not exceed 25% of the said permit and concession.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements with respect to the acquisition of exploration and production rights in your jurisdiction?

The Moroccan Hydrocarbons Code stipulates that any legal entity wishing to acquire the right of exploration or production must enter into a direct agreement with the State, specifically the Ministry of Energy Transition and Sustainable Development. It also stipulates that all applicants must accompany their application with certain documents referred to above.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

There are no special restrictions specific to foreign persons on the acquisition of exploration and production rights. However, when the contract holder is a foreign legal person, the Moroccan Hydrocarbons Code provides for certain provisions (Articles 54, 55, 56 and 58), namely:

- foreign natural persons holding recognition authorisations and companies holding recognition authorisations or research permits that are not incorporated as companies under Moroccan law must provide their foreign currency needs in full;

- foreigners holding an exploitation concession may keep abroad the proceeds of their hydrocarbon sales outside Morocco;

- foreigners holding an exploitation concession must periodically provide, in the forms provided for by the exchange regulations, a statement of their assets abroad resulting from their export sales of hydrocarbons as well as of the payments made with the help of these assets for operations relating to their activity as holders of hydrocarbon exploitation concessions;

- foreigners holding an operating concession are required to repatriate to Morocco the funds in foreign currency necessary to cover their local expenses and their financial and tax obligations, in addition to the proceeds of their sales on the domestic market;
- the transfer of the net proceeds of sale is guaranteed when the investment is made by a foreigner. This warranty covers:
  - the capital contribution made through the sale of convertible currencies to Bank Al-Maghrib;
  - capital gain net of disposal

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

There is a requirement for the concessionaire to conduct professional training programs for national executives and technicians in the oil industry by involving them in operations, to enable Morocco to have a quality human resource in the field.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions, if any, for the transfer or assignment of exploration and production rights? What fees, taxes, or other charges apply to such transfers?

The transfer of an interest in an exploration permit or in an exploitation concession must cover the entire perimeter covered by the permit or concession. The disposal must include all the land, facilities and equipment necessary for the exploitation of the deposit.

It is subject to the prior authorisation of the administration (the concessionaire notifies the Minister for Energy, by registered letter with acknowledgment of receipt, of its intention to proceed with a deed of transfer).

The transferee assumes all the commitments entered into by the transferor.
The concessionaire must also mention in the letter the name and registered office of the transferee, the price, the exact terms and conditions of this transfer.

Are there any restrictions or requirements on change of control in entities holding exploration and production rights?

The main requirement is that the new holder of the exploration and production right must assume all the commitments made by the old one.

However, where the transfer is to be made to a third party, other than the parent company or a subsidiary of the transferor, the State may exercise a right of pre-emption. This right of pre-emption shall be exercised for a period of one hundred and twenty (120) days from the date of notification.

What conditions apply for the granting of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

The concessionaire must provide the name and registered office of the transferee, the price, the exact terms and conditions of this transfer in the registered letter. If the information provided is correct, then the transfer is authorized.

Are rights holders allowed to create security on their exploration and production rights?

Yes, rights holders can create security with the prior approval of the administration. Rights holders can carry out all the actions necessary for the proper functioning of their activity during the period of validity of their rights, provided that they obtain the prior agreement of the administration.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations?

For exploration/research, the total validity period cannot exceed eight (8) years.

Are there any prescribed minimum work and expense requirements for exploration operations?

According to the Oil and Gas Code, no one can obtain an exploration permit unless they demonstrate the technical and financial capabilities necessary to carry out their research and commit to completing a minimum work program along with corresponding financial commitment.

This program must be accompanied by a projected schedule for its implementation. The exploration permit may be subject to the obligation for its holder to provide a deposit to guarantee their contractual obligations.

Are there any mandatory waiver requirements?

There is no mandatory waiver requirement. However, the Moroccan Hydrocarbons Code provides that the holder of an exploration permit may at any time abandon, in whole or in part, his exploration permit provided that he has fulfilled the corresponding work commitments and financial commitments to which he was bound.
The area subject to voluntary abandonment shall be deducted from the area to be retained by the holder.

What are the conditions for the transition from exploration to development and production?

The holder of an exploration permit who has fulfilled his legal and contractual obligations shall have the right, in the event of the discovery of a commercially exploitable hydrocarbon deposit, to obtain an exploitation concession for that deposit.

The application for a concession must be submitted to the Ministry of Energy no later than three (3) months before the expiry of the period of validity of the exploration permit under which it is submitted.

What are the conditions for the start of production operations?

The concessionaire may start the work automatically after approval by the administrative authority.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions when it comes to processing and refining oil and gas produced in your jurisdiction?

Refiners must provide the Minister responsible for mines with a detailed plan of their facilities, which must be kept up to date with each modification, as well as monthly and annual reports of their activity and any technical or economic documents that may be requested from them.

The Minister responsible for Mines determines the measures relating to the industry of refining crude hydrocarbons, processing and conditioning of refined hydrocarbons, regeneration of lubricating oils, filling, storage and distribution of liquefied petroleum gases, The Minister also determines the safety standards to be complied with in the construction and operation of those plants and, the characteristics of refined hydrocarbons, lubricating oils and liquefied petroleum gases to be delivered for sale.

What are the requirements and restrictions for exporting oil and gas produced in the jurisdiction? Please specify any applicable domestic supply requirements.

The holder of an exploitation concession must, before considering the export of its share of production, contribute to the satisfaction of the domestic market under the conditions laid down in the oil agreement.
- In particular, it must divide production with the State;
- comply with all measures taken to respect the environment, health and safety;
- keep in Morocco drill cores as well as all samples of interest to hydrocarbons and mining products.

SERVICES INDUSTRY

Is there a viable and competitive oil and gas services industry in your jurisdiction?

Yes, there is a viable and competitive oil and gas services industry in Morocco.

What are the entry requirements for oil and gas services companies? In particular, please indicate any requirements for local participation.

The entry requirements for oil and gas service companies in Morocco are as follows:

- They must be approved by the Minister responsible for energy, upon proposal from the holder of the reconnaissance, research or exploitation contract;
- They must comply with the hydrocarbons code, which regulates the activities of reconnaissance, research, exploitation and related activities of natural hydrocarbons;
- They must comply with the technical standards, specifications and directives of the contract holder and the project owner.
- They must ensure the quality of their services and answer for their faults or negligence towards the contract holder, the project owner and third parties;
- They must inform the contract holder and the project owner of any incident or accident occurring during the execution of their work;
- They must keep documents relating to their activities available to the contract holder and the project owner;

Furthermore, the hydrocarbons code encourages oil and gas service companies to use local labor, goods and services, wherever possible.

Are there any mandatory local content requirements applicable in the operation of oil and gas services companies?

According to Morocco's 2003 hydrocarbon law, subcontractors or upstream service providers are not explicitly required to acquire goods and services from Moroccan citizens or companies for their work.
However, the law encourages companies holding reconnaissance, research or exploitation contracts to use local labor, goods and services, wherever possible.

ENVIRONMENTAL

What environmental approvals and obligations apply to oil and gas operations in your jurisdiction?

The holder of a reconnaissance authorization, a research permit or an exploitation concession is required to comply with the following environmental obligations:

- repair the damage caused by its work to the owners of the land as well as to neighbouring research and exploitation work;
- return the surface that housed its work under the conditions set by regulation, i.e. in good condition;
- to ensure the safety and health of the public, the environment, the safety and hygiene of personnel, habitat, the best use and conservation of deposits, the protection of springs, public roads and buildings, and, with regard to marine research, the protection of marine resources, the environment and the safeguarding of navigation.

Are there any consequences of a breach of environmental obligations for the rights holder?

In the event of a violation of environmental obligations, legal action is initiated by the administration (the State) in order to give formal notice to the offender and force him to make the necessary repairs and eliminate the effects damaging the environment. In such a case, the rights in the possession of the holder will be forfeited.

Does the liability of the rights holder in the event of a breach of environmental obligations extend to its shareholders, directors, managers and employees?

In the case of a legal entity, the responsibility will be in the name of the company as a whole, but it will be borne by the various representatives of that legal person, and will not extend to the employees.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

The rights holders have an obligation to ensure public safety and health (e.g. the disposal of waste that disturbs safety, public health and the environment, etc.), the safety and hygiene of staff, etc.

Which entity is responsible for enforcing health and safety regulations or obligations?

The Ministry of the Interior, through the Judicial Police, is primarily responsible for verifying compliance with all the conditions relating to public safety and health, but also that of workers.

Are there any consequences for the rights holder of a breach of these requirements?

Any breach of obligations in terms of safety and public health will result in either the criminal liability of the holder, or the forfeiture of the rights in the possession of the holders, or both at the same time depending on the seriousness of the offence.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

This responsibility extends to the various representatives of the company due to their role and involvement in all the activities that led to the non-compliance with the obligations contained in the agreement previously concluded with the administration.

DECOMMISSIONING

What are the decommissioning and abandonment requirements and obligations for oil and gas rights holders in your jurisdiction?

According to Law 21-90 relating to the research and exploitation of hydrocarbon deposits, the holder or co-holder of the exploitation concession is required to declassify the installations and equipment used for exploitation operations. , as well as rehabilitating the sites concerned, at the end of the duration of the concession or in the event of early renunciation thereof. The holder or co-holder must constitute a provision for decommissioning and remediation, the amount of which is set by the Minister responsible for hydrocarbons, taking into account the estimated and updated costs of these operations.
Law 21-90 does not specify the exact deadlines for decommissioning obligations, but it indicates that the holder or co-holder must present to the minister responsible for hydrocarbons, at least six months before the date planned for the cessation of production, a decommissioning and reclamation plan, which must be approved by the Minister. The holder or co-holder must also inform the Minister responsible for hydrocarbons of the effective date of cessation of production, at least three months in advance.
Decommissioning and reclamation must be carried out in compliance with current environmental and safety standards, and under the control of the minister responsible for hydrocarbons. The holder or co-holder must provide the Minister responsible for hydrocarbons with a final report on the decommissioning and reclamation operations, as well as a certificate of conformity issued by an approved body.

Are there any particular events or deadlines that trigger decommissioning obligations?

According to Law 21-90 relating to the research and exploitation of hydrocarbon deposits, the holder or co-holder of the exploitation concession is required to declassify the installations and equipment used for exploitation operations, as well as rehabilitating the sites concerned, at the end of the duration of the concession or in the event of early renunciation thereof. The holder or co-holder must constitute a provision for decommissioning and remediation, the amount of which is set by the Minister responsible for hydrocarbons, taking into account the estimated and updated costs of these operations.

Law 21-90 does not specify the exact deadlines for decommissioning obligations, but it indicates that the holder or co-holder must present to the minister responsible for hydrocarbons, at least six months before the date planned for the cessation of production, a decommissioning and reclamation plan, which must be approved by the Minister. The holder or co-holder must also inform the Minister responsible for hydrocarbons of the effective date of cessation of production, at least three months in advance.

Decommissioning and reclamation must be carried out in compliance with current environmental and safety standards, and under the control of the minister responsible for hydrocarbons. The holder or co-holder must provide the Minister responsible for hydrocarbons with a final report on the decommissioning and reclamation operations, as well as a certificate of conformity issued by an approved body.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

In the petroleum sector, the taxes and duties levied are as follows:

- Corporate Tax: The holder or, as appropriate, each co-holder of any exploitation concession enjoys full exemption from corporate tax for a period of ten (10) consecutive years commencing from the date of regular production start of any exploitation concession.
- Import-related Taxes on Equipment, Materials, and Consumables: Authorization holders of recognition, exploration permits, or exploitation concessions, their contractors, and subcontractors benefit from temporary importation, exempt from customs duties, and all other rights and taxes, of all equipment, materials, and consumable products intended for reconnaissance, exploration, and exploitation of hydrocarbon deposits as well as related works.
- Annual Surface Rent and Establishment Rights: Any legal entity other than a state body must pay to the State (i) establishment rights for any request for exploration permit and its extension, and (ii) an annual surface rent proportional to the area of the exploitation concession, the rates and terms of which are defined by regulation.
- Annual Concession Fee: The holder or, as appropriate, each co-holder of an exploitation concession must pay to the State, according to the scales, rates, and terms provided by regulation, an annual concession fee on their share of hydrocarbon production from the concession, payable according to the provisions of petroleum agreements, either in cash, in kind, or partly in kind and partly in cash.
- Operating Costs: As for operating costs, they are deductible from the gross turnover of the holder or co-holder of the exploitation concession for the calculation of corporate tax and the proportional royalty on profits. Operating costs are also taken into account for the calculation of production sharing between the State and the holder or co-holder of the exploitation concession, within the framework of petroleum agreements.
- Contribution Rights in a Company: The contribution right in society on a pure and simple basis is set at 0.50% for the establishment or increase of capital of companies regardless of the nature of the assets contributed. The application of the contribution right mentioned above results in exemption from transfer duties related to the assumption of liabilities if applicable.

Are there any tax incentives and exemptions in the oil and gas sector? Are these incentives and exemptions regularly granted?

The holder or, as the case may be, each of the co-holders of any operating concession shall benefit from a total exemption from corporation tax for a period of ten (10) consecutive years from the date of regular production of any operating concession.

Oil and gas rights holders, their contractors and subcontractors shall be exempt from all import duties and taxes on equipment, materials and consumables intended for the reconnaissance, exploration and exploitation of hydrocarbons and related activities.
However, the above advantages will not be granted where such equipment, materials and consumables can be supplied by the national market within the limit of an increase - CIF price - of 10% under conditions of equivalent quality and delivery time.

What is the procedure for obtaining the applicable incentives and exemptions?

By following the normal procedure for obtaining the status of holder of such oil and gas rights, the holder will automatically benefit from these exemptions.

STABILISATION RIGHTS

Are there any forms of stabilization rights granted to investors in the oil and gas sector?

There are no stabilization rights at the level of Moroccan courts. However, the legal entity holding the oil and gas rights may negotiate a stabilization clause when concluding the oil agreement with the State in order to guarantee its investment.

Is there an investment threshold required to be eligible for a stabilisation agreement?

Unless otherwise stipulated and unless the administration provides for it at the end of the oil agreement, no investment threshold is required to be eligible for a stabilization agreement. On the contrary, in accordance with the provisions of Law No. 18-95 on the Moroccan Investment

Charter, the State intends to promote all types of investments and therefore guarantees a certain stabilization of the rights granted to foreign investors.

Is the government (and its agencies) complying with the terms of the stabilization agreements?

It is indeed possible for the administration to comply with the terms of the stabilization agreements to the extent that it is the administration itself that gives existence to this right. However, these agreements may be conditional.

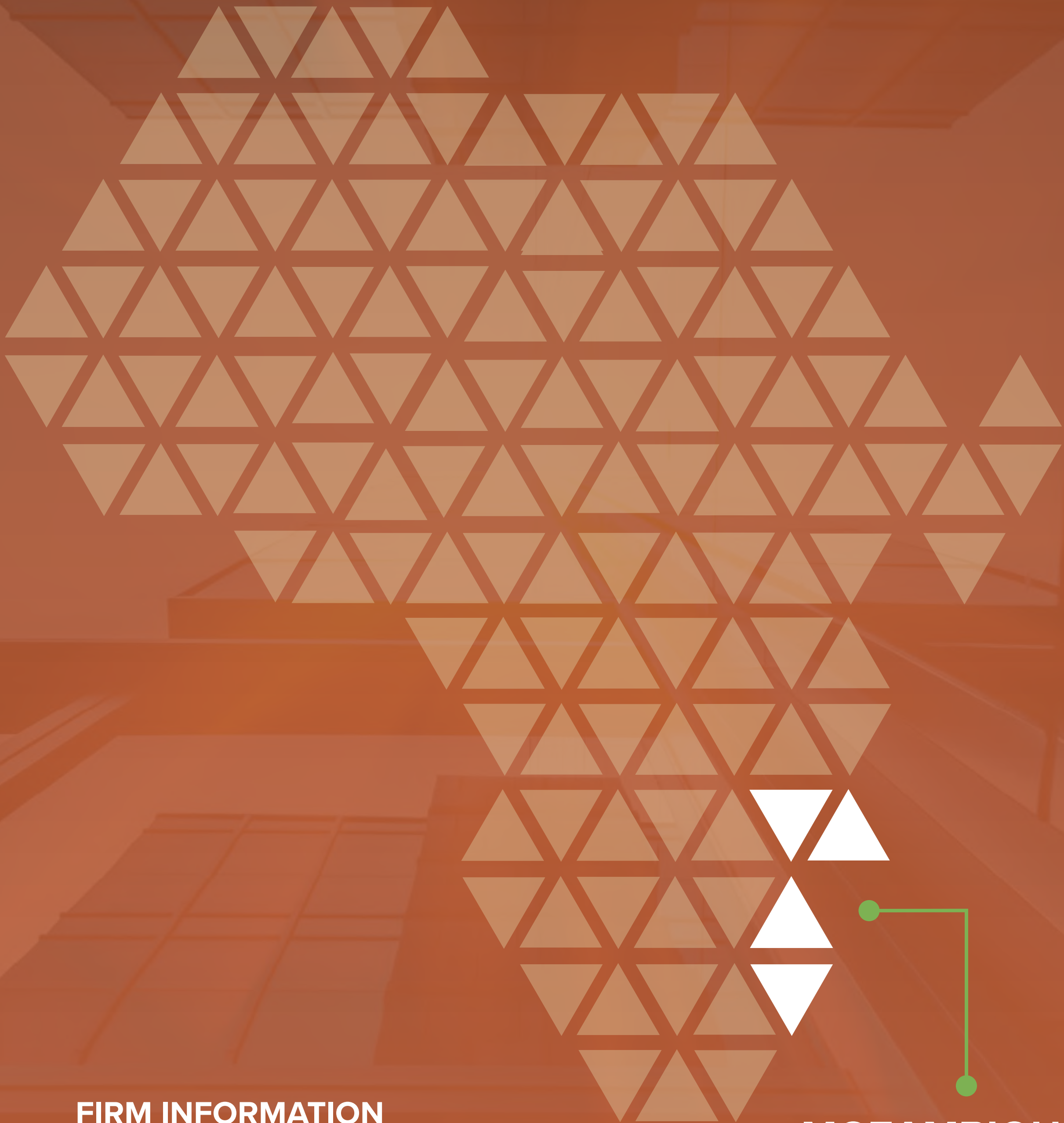
Are there any common issues for investors with regard to the scope and effect of stabilization agreements?

Unless otherwise stipulated, investors have no concerns regarding the scope and effect of stabilization agreements.

DISPUTES

Are there legally prescribed procedures for dispute resolution?

Oil agreements may provide for arbitration where one of the parties is a foreign legal entity. Where this option is exercised, the agreements shall establish a procedure in accordance with international practices in the field of oil arbitration. It must then be specified that the applicable law is Moroccan law.



MOZAMBIQUE
JLA ADVOGADOS

FIRM INFORMATION

Website address : **www.jlaadvogados.com**
Languages spoken : **Portuguese, English**
Telephone : +(258) 21 317 159
Address : Rua dos Desportistas, n.º 691, Edifício Jat 6.1, 13.º Piso, Fracção Norte, Maputo, Mozambique
Contact : Zara Jamal (Partner), Deivid Sacur (Associate), Cecil Gobo (Associate)
Email : maputo@jlaadvogados.com

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

- Constitution of the Republic of Mozambique (approved on 16 November 2004) (and in particular, Articles 97, 98 and 102, which establishes the public ownership of the land and natural resources);
- Law No. 21/2014, of 18 August 2014 (Petroleum Law);
- Law No. 27/2014, of 23 September 2014 (Petroleum Tax Law);
- Decree No. 34/2015, of 31 December 2015 (Petroleum Operations Regulation);
- Decree No. 32/2015 of December 31 2015 - Regulation of the Specific Regime of Taxation and Tax Benefits of Petroleum Operations;
- Decree No. 29/2015 of December 28 2015 - Approval of the Statute of Empresa Nacional de Hidrocarbonetos, E.P. (ENH);
- Resolution No. 25/2016 of October 3 2016 - Model Petroleum Exploration and Production Concession Contract;-
- Decree No. 84/2020, of 18 September 2020 (Licensing Regulations of Petroleum Facilities and Activities); This Decree does not expressly revoke Ministerial Diploma No. 272/2009, enacted on 30 December 2009 (Licensing Regulations of Petroleum Facilities and Activities) but the latter should be considered superseded;
- Decree No. 56/2010, of 22 November 2010 (Environmental Regulation for Petroleum Operations); this decree is superseded by the Petroleum Law in case of conflicts.[4] However, it remains relevant even after the entry into force of the Petroleum Operations Regulations, since both regulate different matters (the Petroleum Operations Regulations do not cover the environmental regulation of petroleum operations). Therefore, until new environmental regulations in connection with petroleum operations are enacted, this decree shall apply to the extent that it does not conflict with the Petroleum Law;
- Decree No. 63/2011, enacted on 7 December 2011 (Employment of Foreign Citizens in the Oil and Mining Sectors); This has been superseded by the Petroleum Law in the case of conflicts;
- Decree No. 61/2006 of December 26 – Regulation on Technical and Health Safety for Geological and Mineral Activities;
- Law No. 15/2011, enacted on 10 August 2011 (Mega Projects Law);
- Decree Law No. 16/2012, enacted on 4 June 2012 (Mega Projects Law Regulations);
- Decree No. 31/2012, enacted on 8 August 2012 (Resettlement Process Resulting from Economic Activities);
- Resolution No. 64/2009, enacted on 2 November 2009 (Gas Market Development Strategy);
- Decree Law No. 45/2012, enacted on 28 December 2012 (Regulations on Import, Sale and Distribution of Petroleum Products);
- Ministerial Order No. 46/2019, enacted on 7 May 2019, approving minimum wages for workers on the production and distribution of electricity, gas and water sectors;
- Ministerial Order No. 95/2018, enacted on 7 November 2018, approving the specifications of marketable petroleum products in Mozambique, establishing the respective rules and techniques for the quality control of Liquefied Petroleum Gas (LPG), gasoline, lighting oil, diesel and fuel / marine diesel oils;

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

Currently, the following entities/bodies regulate activities in the oil and gas sector:

- The **Council of Ministers**, as the highest Governmental body in Mozambique, which includes the president, prime minister and other cabinet ministers, is responsible for creating primary legislation in the oil and gas sector and approvals of mega projects in this field;

- The **Ministry of Mineral Resources and Energy**, as the Ministry that oversees the oil and gas sector and the actions of other regulatory bodies;

- The **National Petroleum Institute**, as regulatory authority responsible for the administration and promotion of petroleum operations under the supervision of the Ministry of Mineral Resources and Energy, and by issuing guidelines for public and private sector participation in research, exploration and exploitation of petroleum products and their derivatives;

- The **High Authority for the Extractive Industry** - although the petroleum law created the High Authority for the Extractive Industry, the law leaves it up to the government to define its legal framework, including competencies, composition and the mechanism for appointing members, which has not been performed yet.

- the **Empresa Nacional de Hidrocarbonetos, E.P. (ENH)**, despite not being a regulatory body, it is the state-owned company that represents the government in oil operations.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

In Mozambique, petroleum resources located in the soil and subsoil, in inland waters, in the territorial sea, on the continental shelf and in the exclusive economic zone, are the property of the state.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

The right to carry out petroleum operations may be granted to national or foreign legal entities that are registered in Mozambique and have the competence, technical capacity and financial means to effectively conduct petroleum operations.

The type of rights or license granted to carry out petroleum operations varies. It includes:

- The Reconnaissance or Prospection license – it grants the non-exclusive right to carry out preliminary research and evaluation work in a certain area, through aerial, terrestrial and other surveys, including geophysical, geochemical, palaeontological, geological and topographical studies.

- The Exploration and Production License – it grants the exclusive right to conduct petroleum operations, as well as the non-exclusive right to build oil production and transport infrastructure, from a certain area, unless access to a pipeline system or other existing infrastructure is available under acceptable commercial terms and conditions.

- The License for Oil and Gas Pipeline Systems – It grants the right to build and operate oil or gas pipeline systems for the purpose of transporting crude oil or natural gas, in cases where these operations are not covered by an exploration and production concession contract.

- Infrastructures License – it grants the right to build and operate infrastructures for oil production, such as processing and conversion, that are not covered by an approved research and production development plan.

Please provide an overview of the procedure for obtaining such exploration and production rights.

The procedures/stages for obtaining exploration and production rights are as follows:

- Submission of an application/proposal for the granting of rights to the National Petroleum Institute, which must contain
  (i) the ID and corporate details of the applicant and its representative;
  (ii) description of the applicant's experience in the oil industry, in particular in the area of drilling, production and transportation of oil in circumstances similar to those in which it intends to operate in the requested area, as well as oil production, refining and marketing activities, including information on the oil sales activities of the applicant or its subsidiaries and other market access conditions;
  (iii) a description of the applicant's technical and operational competences, including its research, development and production capabilities;
  (iv) a description of the organization and technical resources that the applicant will have available in Mozambique, as well as elsewhere, to carry out the activities in the areas covered by the application;
  (v) the applicant's financial situation, including its share capital, shareholding structure and financial documentation, including the last three audited annual reports and accounts as well as those of its parent company;
  (vi) identification of the areas covered by the application including geographical coordinates and map(s); - information on the geological and geophysical data on which the application is based, including structural maps of prospective horizons in the area covered by the application;
  (vii) the proposed work program, including the respective timetable and other proposals;
  (viii) a proposal for the appointment of an operator and a proposal for state participation.

- Payment of a processing fee for the application for the concession granted by public tender.
- Publication of the main terms of the concession contract.

Are there any fees and charges applicable to obtaining these rights?

The law establishes a fee to be paid when applying for the right to carry out petroleum operations, which is set out in Annex B of the Petroleum Operations Regulation, as shown in the table below:

PROCEDURE FEE	AMOUNT (MZN)
Presentation of the application for the right to exercise petroleum operations	2.000.000,00
Assessment of the request to renew the Concession Contract	500.000,00
Appraisal of the request to extend the research period of the Concession Contract	125.000,00
Appreciation of the Development Plan	1.000.000,00
Revision of the Development Plan	125.000,00
Authorisation for the commissioning	500.000,00
Approval of demobilisation plan	500.000,00

What is the duration of the exploration and production rights?

The prospection and production licenses are awarded on an exclusive basis, for the following terms:

- Prospection period is awarded for a maximum term of **eight (8) years**; and
- The development and production period is awarded for a maximum term of **thirty (30) years** as of the date of approval of the development plan.

Are the exploration and production rights renewable? What are the renewal processes?

These exploration and production rights can only be renewed in exceptional cases, where the economic terms offered by the concessionaire are favourable to the national interest.
In order to apply for the renewal, the concessionaire must submit an application for renewal of the exploration and production concession contract to the Minister of Mineral Resources and Energy who oversees the petroleum area no later than three years before the expiry of the respective concession contract.

Does the state have any direct or indirect right or interest in exploration, development and production operations?
In order to guarantee its participation in the research, development and production operations, the state reserves the right to participate in petroleum operations represented by ENH and progressively promote the increase of its participation in the oil and gas enterprises.
This participation may occur during any phase of the petroleum operation in accordance with the terms and conditions to be established by contract. The Law does not provide a specific percentage in the exploration and production license.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

Pursuant to the Petroleum Law, prior consultation with the communities is mandatory in order to obtain the license to commence oil activities. Moreover, the Government must create mechanisms to involve and ensure the organisation and participation of communities in the areas where oil projects are located.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

There are no additional or special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights. The Mozambican law and several international treaties ensure that both foreign and domestic investors will enjoy the same treatment in Mozambique.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

Local content requirements are currently spread out in various legal instruments but it is expected that these will be complied and detailed in a Local Content Law, which is in the process of being approved in Mozambique.

- Foreign persons providing services to oil operations must be associated with Mozambican legal persons;

- Holders of rights to conduct petroleum operations must give preference to local services and products when these have the same international standards as international products, materials and services and charge the maximum of ten per cent higher than the prices of available imported goods;

- The concessionaire must, in consultation with the Ministers overseeing the areas of petroleum and labor, employment and social security, propose and implement a training and employment program for its Mozambican workers at each stage and level of operations, taking into account safety requirements and the need to maintain reasonable standards of efficiency in the conduct of petroleum operations;

- According to the Petroleum Operations Regulation, the holder of the oil exploration and production right must contribute to the training of national technicians in accordance with the clauses of the concession contract.

In certain cases, the law also requires that the Concessionaires to have a Local Content Plan which is approved by the Government concurrently with the approval of the Development Plan and must be updated periodically.

Each Local Content Plan must address the participation of Mozambican legal persons or individuals and Mozambican citizens in the provision of goods and services, except in respect of principal contracts and/or contracts for the supply of goods or provision of services related to technology, patents, and specialized supplier requirements, including without limitation in connection with the construction, operation and maintenance of the Rovuma Basin Project Infrastructure (where foreign companies may be procured).

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

Under the Petroleum Law and its regulations, the approval of the Minister of Mineral Resources and Energy who oversees the petroleum sector is required for the assignment of exploitation and production rights to another person.

The assignments of exploitation and production rights must be by a written instrument, by the assignee, under conditions accepted by the assignee and who agrees to be a person constituting the concessionaire, thereby binding them to the terms and conditions of the concession contract and to all documents required by administrative decision or by law. The transfer or assignments of rights are subject to payment of fee set out in the annex B, of the regulation of the Petroleum Law. Such transfers of rights –including the indirect transfer of participating interests – may also be subject to the payment of capital gains tax.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

Any change of control, direct or indirect, is subject to a prior governmental authorisation.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

The condition for granting consent or government approval for the transfer or assignment of exploration and production rights is that the applicant must demonstrate to the Minister of Mineral Resources and Energy that it has an adequate level of financial and technical capacity to pursue these activities.

Are rights holders allowed to create security over their exploration and production rights?
Yes, security can be created over exploration and production rights
The holder of exploration and production right can create a mortgage on immovable assets (e.g. infrastructure), a pledge on movable assets (e.g. shareholdings and other rights) and conditional assignments of its interest in the concession contract and related agreements, subject to the terms of the concession contract.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations ?
Please refer to the terms referred on section 2, above.

Are there prescribed minimum work and expenditure obligations for exploration operations in the oil and gas sector?

Exploration companies are typically required to fulfil certain work obligations during the exploration phase, which may include seismic surveys, drilling of exploration wells, and geological studies. Additionally, there are expenditure obligations that companies must meet within specific timeframes.
The exact minimum work and expenditure obligations are defined in the exploration licenses awarded by the Mozambican government. These obligations are designed to ensure that companies actively explore and invest in the development of Mozambique's oil and gas resources.

Are there any compulsory relinquishment requirements?

Concessionaires are usually required to relinquish a portion of the exploration area that they are not actively developing. The specific relinquishment requirements, including the timing and area to be relinquished, are typically defined in the exploration license.

What are the conditions for transitioning from exploration to development and production?

The transitioning from exploration to development and production in the gas sector in Mozambique is outlined in the applicable production sharing contracts (PSCs) or concession agreements between the government and the exploration companies. These agreements establish the terms and requirements for moving from exploration to development and production phases.

Some key conditions and steps involved in this transition may include:
- Discovery of commercially viable gas reserves;
- Submission of a field development plan (FDP);
- Approval of the FDP by Mozambican government ;
- Negotiation and approval of production sharing contracts;
- Implementation of the development plan;
- Compliance with regulatory and environmental requirements.

What are the conditions for commencement of production operations in Mozambique oil and gas sector?

The commencement of production operations in the Mozambique oil and gas sector typically involves several key steps and requirements. These conditions may vary depending on the specific project and the terms outlined in the production sharing contracts or concession agreements.

Here are some general conditions that are usually involved:
- Completion of development activities;
- Regulatory approvals and permits;
- Completion of testing and commissioning;
- Infrastructure construction;
- Health, safety, and environmental compliance;
- Financial arrangements.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

The processing and refining of oil and gas produced in the Mozambique oil and gas sector are subject to certain requirements and restrictions which aim to ensure compliance with industry standards, environmental regulations, and maximize value-addition within the country. Here are some key considerations:

- **Licensing and permits**
  Required to operate or start the operation of a petroleum facility. To obtain this license the facility must undergo a prior inspection by INP, and INP must obtain a favorable opinion from the relevant government entities, which may include, among others, health, environment, labor, sea, interior waters and fishing, public works, transport and firefighting entities, as applicable.

- **Local content requirements**
  The Petroleum Law and Petroleum Operations Regulation provide certain local content requirements applicable to foreign investors carrying out upstream operations. In summary: There is a requirement to launch tenders for the supply or provision of goods and services in an amount equal to or higher than MZN 40,000,000. In the acquisition of goods and services, the concessionaire/operator must guarantee that foreigners are associated with a Mozambican individual or a Mozambican legal entity. For the purposes of the Petroleum Law, the concept of 'Mozambican Individual' means an individual holding Mozambican nationality, whereas 'Mozambican Legal Entity' means (i) a legal entity incorporated and registered under the laws of Mozambique, (ii) with registered office and effective management in Mozambique and (iii) in which at least of 51% of the share capital is held by Mozambican individuals or legal entities;

- **Environmental regulations**
  In order to obtain the Environmental Licence, the Mozambican government requires several steps to be followed:
  (i) Submission of the Environmental Impact Project Proposal;
  (ii) Pre-Evaluation;
  (iii) Environmental Impact Assessment;
  (iv) Public consultation process;
  (v) Environmental Impact Assessment Report; and
  (vi) Issuance of the Environmental License.

- **Value addition and domestic supply**
  The Government shall guarantee that a quota of no less than 25% of the oil and gas produced in national territory is dedicated to the national market.
  The Government rules the acquisition, price definition and other matters related to the use of the oil and gas quota.

- **Infrastructure and logistics**
  The construction and operation of an oil pipeline and gas pipeline system, as well as the concession and operation of infrastructure, are enabled through a concession contract following a public tender.
  The concession contract for the construction and operation of petroleum infrastructure grants the right to construct and operate infrastructure for petroleum operations, such as processing and conversion, which are not covered by an approved exploration and production development plan.

- **Compliance with quality and safety standards**
  The holder of rights is required to conduct petroleum operations in a safe and efficient manner with the aim of ensuring quality and safe standards needed for the project.

What are the requirements and restrictions for the export of oil and gas produced in jurisdiction? Please specify any applicable domestic supply requirements.

The export of oil and gas produced in the Mozambique is subject to standard requirements that aim to ensure compliance with legal, fiscal, and contractual obligations, promote local value addition, and support the sustainable development of Mozambique's energy sector. The requirements include:

- Obtaining export permits and licenses;
- Compliance with fiscal obligations;
- Compliance with international trade regulations;
- Establish suitable infrastructure and logistics networks; and
- Compliance with quality and safety standards.

The Government may also impose domestic supply requirements to meet local energy needs, promote economic development, and ensure energy security. Companies may be required to allocate 25% of their production for domestic consumption or prioritize the supply of refined products to the domestic market, as stipulated in the relevant production sharing contracts or concession agreements.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

The discovery of significant offshore natural gas reserves has attracted some international players in the value chain of the oil and gas industry and has helped improve the domestic companies' abilities to provide services in the industry. However, there is still a lot of work to be done to ensure that domestic companies have the level of proficiency and expertise required for the industry.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

In general terms, companies are required to adhere to certain entry requirements and regulations, as follows:

- Business registration and licensing;
- Compliance with legal and fiscal obligations;
- Technical and safety standards;
- Experience and track record in providing oil and gas services;
- Partnership with local entities;
- Local content requirements to promote the participation of local businesses and workers in the oil and gas sector. These requirements may vary depending on the specific

project, but generally, companies are expected to demonstrate their commitment to local participation. This includes partnering with local companies, sourcing goods and services locally, providing training and employment opportunities for Mozambicans, and transferring technology and skills to the local workforce.

There is no specific legal regime for joint ventures. Each member of the joint venture shall set-up its representation (subsidiary/branch) in Mozambique to hold its participating interest in the EPCC.

This notwithstanding, it is worth noting that:

- Foreign legal entities are required to incorporate a local subsidiary or register a local branch prior to the carrying out of any petroleum/business activities in the country.
- Foreign legal entities that directly or indirectly hold or control legal entities that own rights under an EPCC must be established, registered and administered under a transparent jurisdiction.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies in Mozambique ?

Please refer to Section 3, above.

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?

Oil and gas operations in Mozambique are subject to various environmental authorizations and obligations to ensure sustainable and responsible practices. These requirements are in place to protect the environment, mitigate potential impacts, and promote the conservation of natural resources. Some key environmental authorizations and obligations that shall apply to oil and gas operations are as follows:

- Environmental Impact Assessment (EIA);
- Environmental Management Plan (EMP);
- Biodiversity and Conservation;
- Water Management;
- Waste Management;
- Air Quality Management;
- Spill Prevention and Response;
- Compliance Monitoring.

It is important for oil and gas companies to consult with the relevant government agencies, such as the National Directorate of Environmental Impact Assessment and the Ministry of Land, Environment, and Rural Development, to understand the specific environmental authorizations and obligations that apply to their operations in Mozambique.

Are there any consequences of a breach of environmental obligations for the rights holder?

Yes, the consequences are designed to ensure compliance with environmental regulations, protect the environment, and hold companies accountable for any adverse impacts resulting from their operations. Here are some potential consequences of breaching environmental obligations:

- Fines and Penalties;

  The fines shall be calculate per day of non-compliance in the minimum between MZN 2,5000,000.00 and MZN 5,000,000.00, in addition to imposition of other penalties provided under the general law, the obstruction or hindrance of the performance of activities established for entities.
- Suspension or Revocation of Permits;
- Legal Actions and Remediation;
- Operational Restrictions;
- Reputational Damage; and
- Compliance Obligations and Corrective Actions.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

Yes, the Mozambican Commercial Code establishes the possibility of piercing the corporate veil and holding shareholders liable in these cases and liability can also be extended to managers, directors and employees if determined on a case-by-case basis that the breach was due to their conduct.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?
Oil and gas companies are expected to comply with relevant laws, regulations, and industry standards to ensure a safe working environment and mitigate potential risks, such as:

- Occupational Health and Safety Laws;
- Health and Safety Management System;
- Risk Assessment and Hazard Control;
- Training and Competency;
- Personal Protective Equipment);
- Emergency Preparedness and Response;
- Monitoring and Reporting;
- Contractor Management;
- Employee Participation and Consultation.

Which entity is responsible for the enforcement of health and safety regulations or obligations in the gas sector?

In Mozambique, the entity responsible for enforcing health and safety regulations or obligations in the gas sector is the General Labor Inspection a government agency responsible for promoting occupational health and safety and ensuring compliance with relevant regulations. The Ministry of Labor, Employment and Social Security also plays a role in overseeing and enforcing occupational health and safety regulations in the country.

Are there any consequences of a breach of these requirements for the rights holder?

Yes, the specific consequences may vary depending on the nature and severity of the breach , but they typically involve penalties, fines or legal actions. Sme potential consequences can include:
• Fines and Penalties;
• Licence Suspension or Revocation;
• Legal Action and Compensations.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

Please refer to Section 8, above.

DECOMMISSIONING

What are the decommissioning and abandonment requirements and obligations for oil and gas rights holders in your jurisdiction?

The concessionaire is required to prepare a decommissioning plan in compliance with the applicable laws and ensure that the cessation of petroleum operations and the decommissioning of infrastructures are conducted prudently and in accordance with good oilfield practices. The parent company guarantee that the concessionaire is required to provide to ensure compliance with the obligations arising from the concession contract will only be released upon completion of decommissioning and fulfillment of all the concessionaires' obligations under the concession contract. Decommission of petroleum infrastructures is also subject to the obtainment of a decommissioning license pursuant to the rules established under the Regulations for the Licensing of Petroleum Infrastructures and Operations.

Are there any particular events or timelines that trigger decommissioning obligations?

The concessionaire shall prepare a detailed decommissioning plan, in consultation with INP and submit it to the Ministry of Mineral Resources and Energy, no less than two years prior to the date on which production operations are expected to terminate.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

Entities entitled to perform petroleum operations are subject to the general taxes: income tax; value-added tax; municipal tax (when applicable); other taxes and fees established under the law. In addition to the above, pursuant to the Special Regime for Taxation and Fiscal Benefits for Petroleum Operations, concessionaires are also subject to petroleum production tax (PPT), which is levied on oil and gas produced in each concession area (10 per cent for crude oil and 6 per cent for natural gas) and special income tax assessment rules (e.g., cost deductibility, amortization, etc). The Mozambican Tax Authority (through the Directorate-General for Taxation) is the governmental body responsible for the management of activities related to the determination, collection and control of public revenues.

Are there any tax Incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

Under the current legal regime the tax benefits applicable to oil and gas concessionaires is basically limited to reduced withholding taxes on payments made to non-residents and special customs regime applicable to the goods used in the O&G operations.
Subcontractors may also take advantage of the general regime if they make investments in Mozambique under the Investment law.

What is the procedure for obtaining any applicable incentives and exemptions?

The concessionaires of oil and gas operations are entitled to take advantage of the tax benefits established by law. Some other types of incentives may be negotiated when discussing the terms of the relevant Petroleum exploration and production contract. Other parties (e.g. subcontractors) may submit an investment project to the Investment Agency (APIEX) with details of the investors, project and a five-year plan and projected accounts in order to benefit from the incentives and exemptions.

STABILISATION RIGHTS

Are there any forms of stabilization rights granted to investors in the oil and gas sector?

Yes, the law foresees a tax stabilisation clause that remains in force for 10 years after the beginning of production. The stabilisation period may be extended until the initial term of the oil and gas concession provided an additional 2% petroleum production tax rate is paid as from the eleventh year of production.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

Yes. The stability becomes effective through proven investment equivalent to one hundred million US dollars.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

There is no experience in applying the current regime in Mozambique so far. The largest blocks currently under development and production are subject to a different (previous) regime. However, stabilization clauses were already foreseen in previous concessions and have generally been respected.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

Despite the popularity of stabilization clauses, their practical value to oil and gas companies is questionable, particularly when the fairness of fiscal regimes is so often called into question. The granting of stability provisions that conflict with national law do not receive the protection of international law and despite such mechanisms, host countries will still proceed with their nationalization policies, under the aegis of the permanent sovereignty over natural resources principle, and challenge their previous commitments if they find it lucrative to do so. The use of stabilization clauses in state contracts should, in theory, restrain the host country from adopting unilateral measures of this sort (which have such detrimental consequences on the investors' interests).

DISPUTES

Are there any statutorily prescribed procedures for the resolution of disputes?

The Mozambican legal framework that governs the resolution of disputes in the oil and gas industry grants the holder of petroleum exploration rights the right to resort to international arbitration to resolve disputes once alternative means of resolution have been exhausted. This law provides guidance on various types of disputes, such as contractual disputes, regulatory disputes and environmental disputes.

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

N/A

NAMIBIA
CRONJE INC

FIRM INFORMATION

Website address : **www.cronjelaw.com**
Languages spoken : **English**
Telephone : (+264) 81 146 9407
Address : 1 Jan Jonker Road, Klein Windhoek, Windhoek, Namibia
Contact : Christiaan Cronje & Nick Korb
Email : cronje@cronjelaw.com / nick@cronjelaw.com

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

The upstream petroleum industry in Namibia is primarily regulated by the Petroleum (Exploration and Production) Act 1991 (Act 2 of 1991) (the "Petroleum Act"). The Petroleum Act provides that all rights in respect of petroleum are vested in the state, notwithstanding any right regarding the ownership of the land where the petroleum is found. The Petroleum Act, provides for the reconnaissance, exploration, production, and disposal of petroleum, as well as control over it. No person may carry on any operations in respect of petroleum without the necessary licence issued by the Ministry of Mines and Energy (MME). The Act also provides for the payment of petroleum royalties.

Aside from the Petroleum Act, the Petroleum (Taxation) Act 1991 (Act 3 of 1991) (the "Taxation Act") – is also applicable to upstream petroleum activities. The Taxation Act provides for the payment of petroleum income tax and additional profit tax.

Furthermore, the Petroleum Act requires an applicant for a petroleum licence to enter into a Model Petroleum Agreement with the state. The agreement must be entered into before an exploration or production licence is issued to an applicant. The content of the Model Petroleum Agreement is prescribed by the Petroleum Act. The Model Petroleum Agreement was published in 1998 and updated in 2007.

Other legislation that makes up the framework within which petroleum exploitation takes place includes environmental legislation, such as the Water Act 54 of 1956, the Atmospheric Pollution Prevention Ordinance 11 of 1976, the Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981, and the Environmental Management Act 7 of 2007.

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

Currently, the following entities/bodies regulate activities in The Petroleum Act is administered by the Minister of Mines and Energy (the "Minister"). The Minister must appoint a Commissioner of Petroleum Affairs (the "Petroleum Commissioner") and a Chief Inspector of Petroleum Affairs. These two officers exercise or perform the powers, duties, and functions conferred or imposed upon them by or under the provisions of the Petroleum Act, as well as such other functions as may be imposed upon them by the Minister. The Petroleum Commissioner and Chief Inspector are assisted by such other officers as may be designated by the Permanent Secretary: Mines and Energy for this purpose. The Petroleum Ancillary Rights Commission is also established under the Petroleum Act. This commission principally deals with disputes between licence-holders and landowners.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

In Mozambique, petroleum resources located in the soil and subsoil, in inland waters, in the territorial sea, on the continental shelf and in the exclusive economic zone, are the property of the state.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

According to Article 100 of the Constitution of the Republic of Namibia 1990, all natural resources on, in, or under any land and any area covered by the territorial sea or continental shelf in Namibia are vested in the state, unless they are otherwise lawfully owned. This includes all natural oil and natural gas, which, under Namibian legislation, are generally referred to as petroleum. The Petroleum Act also provides that all rights in respect of petroleum are vested in the state, notwithstanding any right regarding the ownership of the land where the petroleum is found.

As a result, ownership of petroleum resources, as well as the right to exploit these resources, vests in the state. This effectively amends the common law position in Namibia, according to which the owner of land is considered to be the owner of everything above and below the land. The Minister, acting on behalf of the state, may, however, grant the rights to exploit these resources to applicants in accordance with the terms of the Petroleum Act.

The National Petroleum Corporation of Namibia (Pty) Ltd (Namcor) is a private company duly incorporated under the company laws of Namibia, and is wholly owned by the government of the Republic of Namibia. Namcor has no regulatory authority nor statutory right to participate in petroleum development. However, at the request of the Minister and on its own behalf or that of the state, it may:

- carry out reconnaissance operations, exploration operations, and production operations, whether on its own or together with any other person or entity; and
- carry out or take part in any process of refining, disposing of or dealing in petroleum or any of its by-products.

Namcor may engage in these activities in order to advise or assist the Minister in relation to the Petroleum Agreement or any negotiations relating to it, or in relation to the discovery of petroleum or the development of petroleum resources, with the goal of assisting the Petroleum Commissioner upon request and in the exercise of their powers, duties, and functions under the Petroleum Act.

Namcor, therefore, has no special rights in connection with upstream licences. In practice, however, Namcor typically receives a 10% participating interest in the award of an exploration licence. Namcor's participating interests are typically subject to such terms as may be agreed between Namcor and one or more co-licence-holders in terms of a joint operating agreement.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

The Petroleum Act provides that a licence, other than a reconnaissance licence, may not be issued or transferred to any person other than a company. The Petroleum Act then further provides that the Petroleum Commissioner may grant three types of licences upon application by a company, the three being:

1. Reconnaissance Licence

This licence allows the holder to carry out preliminary surveys, including geological, geophysical, and geochemical activities, to assess the potential for petroleum resources in a given area. The licencee is only permitted to conduct non-intrusive exploration activities, which excludes drilling and production.

2. Exploration Licence

This licence allows the holder to explore for petroleum resources in a specified area. The licensee has the right to explore, conduct drilling operations, and evaluate the petroleum potential of the licenced area. Applicants for an exploration licensee must have a clear exploration plan and the ability to fulfil the obligations of the licence.

3. Production Licence

This licence allows the holder to produce petroleum from a discovered field. The licensee has the right to extract, produce, and sell petroleum from the designated field. The licencee is also required to comply with the development plan approved by the Ministry of Mines and Energy. To qualify for a production licence, the applicant must have made a commercial discovery under an exploration licence.

Qualification Requirements:
To acquire any of these licences, companies or individuals must meet the following general criteria:

- Technical Expertise: The applicant must demonstrate adequate technical knowledge and experience in petroleum exploration and production.

- Financial Capability: The applicant must have sufficient financial resources to undertake the proposed activities.

- Compliance with Namibian Law: The applicant must comply with all relevant Namibian laws and regulations, including environmental laws.

- Local Content Requirements: The government encourages the involvement of Namibian companies and workforce in the operations, so applicants may be required to show how they plan to meet local content requirements.

Please provide an overview of the procedure for obtaining such exploration and production rights.

1. Submission of Application

An exploration right production right is acquired by application. The applicant must complete and submit a formal application to the Ministry of Mines and Energy. This form usually includes detailed information about the applicant, the proposed area for exploration or production, and the nature of the activities to be undertaken. In the case of a company, this application must contain:

- the name of the company and particulars of its incorporation and registration;
- the names and nationalities of its directors;
- the share capital of the company and the name of any person who is the beneficial owner of more than 5% of the shares issued by the company;
- the block or blocks to which the application relates;
- the minimum operations and expenditure proposed to be carried out or expended in respect of the block or blocks to which the application relates;
- the programme of these operations;
- the expenditure in respect of these operations;
- the period within which the operations will be carried out and the expenditure will be made;
- an estimate of the effect the proposed reconnaissance operations may have on the environment; and
- the period for which the licence is required.

Along with the application form, the applicant must provide supporting documents, including:

- **Work Program:** A detailed plan outlining the exploration or production activities to be conducted.

- **Technical Expertise:** Documentation demonstrating the applicant's technical capacity and experience in petroleum exploration and production.

- **Financial Capability:** Evidence of the applicant's financial resources to fund the proposed operations.

- **Environmental Impact Assessment (EIA):** An EIA may be required to assess the potential environmental impacts of the proposed activities and outline mitigation measures.

2. Evaluation by the Ministry of Mines and Energy

- The Ministry reviews the application to ensure that all required documents and information have been provided and that the applicant meets the basic eligibility criteria.

3. Negotiation of Terms and Conditions

- If the application is deemed satisfactory, the Ministry will enter into negotiations with the applicant to establish the terms and conditions of the licence. This may include:

  o Work Commitments: Specific activities that the licensee is obligated to carry out within set timeframes.
  o Financial Obligations: Details of royalties, taxes, and any other financial terms.
  o Local Content Requirements: Provisions for involving Namibian companies and workforce in the operations.

4. Granting of the Licence

- Once the terms are agreed upon, the Ministry of Mines and Energy issues the appropriate licence (Reconnaissance, Exploration, or Production Licence) to the applicant. The licence issued must be registered with the Petroleum Registry of Namibia.

Are there any fees and charges applicable to obtaining these rights?

Schedule 1 to the Petroleum Act prescribes the fees payable in respect of an application for the above licences as well as the renewal of these licences. The relevant fees payable have been inserted below:

NATURE OF APPLICATION	AMOUNT OF FEE
Application for reconnaissance licence	R15 000
Application for renewal of reconnaissance licence	R 3 000
Application for exploration licence	R30 000
Application for renewal of exploration licence	R15 000
Application for production licence	R30 000
Application for renewal of production licence	R15 000
Application for transfer of reconnaissance licence	R15 000
Application for transfer of exploration licence	R30 000
Application for transfer of production licence	R30 000
Inspection of register	R 300
Obtaining copy of entry in register, per copy	R 150

What is the duration of the exploration and production rights?

A **reconnaissance licence** is issued for a maximum period of two years and may be renewed for further periods, not exceeding two years at a time. It may, however, only be renewed twice.

1. Exploration Licence

An exploration licence is typically granted for an initial period of **four years**. The Minister may, upon application and with good cause, extend this period to an initial maximum of five years.

The licence can be renewed twice, with each renewal lasting for a period of **two years**. This means the exploration licence can be valid for a total of **eight years**.

- In special circumstances, the Ministry of Mines and Energy may grant a further extension if justified, although this is not common practice. In this regard, the Minister may, upon application and with good cause, extend these periods to a maximum of **three years** each. A third renewal is possible if the Minister deems it to be in the interest of the development of petroleum in Namibia. This third renewal may not be for a period longer than **two years**, although the Minister may, upon application and with good cause, extend this period to a maximum of **three years**.

2. Production Licence

A production licence is granted for an initial period of up to **25 years**.

At the discretion of the Minister, the production licence can be renewed for an additional period of **10 years** if the licensee applies for renewal and the conditions of the licence are being met. The renewal period runs from the date on which the licence would have expired if an application for renewal had not been made or from the date on which the application for renewal was/is granted, whichever is later.

Further renewals beyond the 10-year extension are typically not provided under standard conditions, but exceptional cases may be considered depending on the remaining resources and other relevant factors.

A production licence may not be renewed on more than one occasion. The maximum duration of a production licence is therefore **35 years**. A production licence cannot expire in the period during which an application for its renewal is being considered, until the application is refused, withdrawn, or lapses, whichever occurs first.

Are the exploration and production rights renewable? What are the renewal processes?

See above response regarding the renewal of licences.

An application for the renewal of a licence is made to the Petroleum Commissioner in such form as may be determined by the Minister and must be accompanied by the applicable fee contained in Schedule 1 of the Petroleum Act. The Minister may then grant on such terms and conditions as may be determined by him or her, or refuse to grant, an application for the renewal of a licence.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

See response to question 2.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

There are no statutory local participation requirements in relation to the acquisition of exploration and production rights. However, it is common practice for local companies to take 5-10% participation interest in licences apart from Namcor's interest.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

There are no restrictions on foreign investment in hydrocarbons, but such foreign investors may be required to comply with government approvals in the form of licence approvals from the Ministry of Mines and Energy, and potentially the Namibian Competition Commission
Also, foreign direct investment, such as investments into the oil & gas sectors to assist or finance the acquisition of exploration or production in the oil & gas sector are subject to exchange control regulations.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

There are no statutory local content requirements for upstream operations by private investors. However, respective licences issued may in themselves contain specific conditions relating to local content placing an obligation on the licence holder to comply with the imposed conditions in this regard.
In November 2021, the Ministry of Mines and Energy presented a draft local content policy on its website, to serve as notice to the public of its intention to embark on a consultative process with stakeholders, to formulate a local content policy for the petroleum upstream industry in Namibia. The draft aims to strike a conversation around policy yet to be adopted, that will clearly define "local content" and set out clear and comprehensive plans on local content to ensure that Namibians benefit from their natural resources. This process is yet to be concluded. In the interim, it is a standard condition of a petroleum licence that the person to whom the licence has been issued must:

- when selecting employees, give preference to Namibian citizens who have appropriate qualifications for the purposes of the operations to be carried out in terms of the licence;
- carry out training programmes in order to encourage and promote the development of Namibian citizens in their employment;
- having due regard for the need to ensure technical and economic efficiency, and make use of products, equipment, and services which are available in Namibia;
- co-operate with other persons involved in the petroleum industry in order to enable Namibian citizens to develop the skills and technology required to render services in the interest of the industry in Namibia; and
- immediately report the discovery of any mineral in their exploration area to the Minister.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

No person may transfer a petroleum licence, or grant, cede, or assign any interest in a petroleum licence to any other person without the written approval of the Minister. The same applies if a person wishes to become a joint holder of a petroleum licence. A licence may only be transferred, or interest in a licence granted, ceded, or assigned, to a company, and only another company may become a joint holder of a petroleum licence.

The renewal, transfer, cession, or assignment of interest in a licence is to be made by way of application to the Petroleum Commissioner. and the. Such application must contain particulars of an assignee's financial and technical capacity to fulfil the work obligations under the petroleum agreement. The granting, ceding, or assignment of an interest in a licence does not affect the obligation or liability of the holder of a licence imposed in terms of the particular licence or any provisions of the Petroleum Act. The Minister of Mines and Energy has the discretion to refuse consent for a transfer or assignment if it is deemed not to be in the best interest of

Namibia. This could be due to concerns about the transferee or assignee's capabilities, potential negative impacts on the local economy, or other public interest considerations. Transfers that would result in speculative holding of rights, or that are intended to circumvent local content requirements, may be prohibited. The Ministry seeks to prevent situations where rights are transferred to entities that do not intend to carry out exploration or production activities effectively

It takes approximately one to two months for such an application to be considered. The application fees for the transfer of an exploration or production licence amount to NAD30,000 and there are no statutory pre-emptive rights reserved for the state.

In respect of applicable taxes, any sale/donation/ expropriation cession, grant or other alienation or transfer of ownership of a licence or right to mine petroleum shall be included in gross income under the Income Tax Act. The sale, donation, expropriation, cession, grant or member's interest in a company that holds a petroleum licence or petroleum right, whether directly or indirectly shall also specifically be included in gross income and taxed accordingly. The acquisition costs and exploration expenditure relating to the licence/right as well as costs of improving the value of the petroleum right/licence will be deductible against the income. The deduction will be limited to the income.

In addition to the above, the Competition Act 2 of 2003 applies to all mergers and acquisitions relating to, inter alia, the oil and gas sector. The Namibian Competition Commission (NaCC) regulates mergers and acquisitions in accordance with the Competition Act 2 of 2003 to ensure they do not negatively impact competition within the country. The Competition Act requires parties to a notifiable merger to notify the NaCC of the proposed transaction and obtain approval before completing the merger. Notifiable mergers are transactions wherein the combined annual turnover and/or assets of the merging parties in Namibia fall within specified thresholds.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

A change of control of a company does not require the approval of the Minister. However, the Petroleum Act does authorise the Minister to obtain information relating to the controlling interest of an applicant in respect of any application for, or renewal or transfer of, licences or for approval for granting, cession or assignation of interest in licence, or to be joined as a joint holder of a licence.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

See response above, together with the high-level overview of the possible impact of the Competition Act provided above.

Are rights holders allowed to create security over their exploration and production rights?

Under section 11 of the Petroleum (Exploration and Production) Act, 1991, rights holders may create security over petroleum exploration and production rights with the prior written consent of the Minister. This ensures that the government retains control over who holds these vital rights and under what conditions they are encumbered.

Regulation 7(3) of the Petroleum Regulations; 1997 permits the Minister to impose specific conditions for approval for the creation of a security interest. These conditions may include requirements to maintain operational activity, restrictions on further encumbrances, or obligations related to local content and environmental compliance.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations ?

No, there are not. However, licences are only granted for certain periods of time as discussed above.

Are there prescribed minimum work and expenditure obligations for exploration operations in the oil and gas sector?

No, there are no prescribed minimum work and expenditure obligations for exploration operations. However, the relevant licence and the Model Petroleum Agreement may include terms and conditions relating to the minimum exploration operations or production operations to be carried out and the timetable determined for purposes of such operations as well as the minimum expenditure in respect of exploration operations or production operations. In other words, any prescribed minimum work and expenditure obligation for exploration operations will be negotiated between the government of Namibia and the other joint venture partners to the Petroleum Agreement.

Are there any compulsory relinquishment requirements?

An exploration licensee must relinquish a portion of the licenced area at the end of each renewal period. The relinquishment is mandatory and aims to ensure that only areas with genuine exploration potential are retained by the licensee, while other areas are released for possible exploration by other interested parties.

After the initial period of the exploration licence (which typically lasts for four years), the licensee is required to relinquish at least 50% of the original licenced area when applying for the first renewal. Upon the second renewal (which typically follows two additional years), the licensee must relinquish at least 50% of the remaining area. If the exploration licence reaches the end of its final renewal period (up to eight years in total, or longer if extended under special circumstances), the licensee is required to relinquish the entire remaining area, unless a production licence has been applied for and granted for a portion of the area where a commercially viable discovery has been made.

Licensees may also voluntarily relinquish parts of the exploration area at any time during the licence period. This can be strategic if certain areas are deemed non-prospective, allowing the licensee to focus resources on more promising areas.

What are the conditions for transitioning from exploration to development and production?

The key conditions and steps for this transition are outlined below:

1. Commercial Discovery

- Confirmation of Commercial Viability: The primary condition for transitioning from exploration to development and production is the confirmation of a commercially viable petroleum discovery. The licensee must demonstrate that the discovered resources are sufficient in quantity and quality to justify the investment in development and production.

- • Notification of Discovery: Under Section 39 of the Petroleum Act, if a discovery is made during the exploration phase, the licensee is required to notify the Minister of Mines and Energy in writing. This notification must include detailed information about the discovery, such as the location, estimated size of the reserves, and initial test results.

2. Submission of an Appraisal Program

- Appraisal Program: Following a discovery, the licensee must carry out an appraisal program to assess the extent and characteristics of the discovered resource. The purpose of the appraisal is to gather sufficient data to determine whether the discovery is commercially viable and to plan for its development.

- Approval of Appraisal Program: The appraisal program must be submitted to the Ministry of Mines and Energy for approval. The program should include details on the additional exploration and testing activities that will be conducted to evaluate the discovery.

3. Declaration of Commerciality

- Declaration of a Commercial Discovery: After completing the appraisal program and determining that the discovery is commercially viable, the licensee must formally declare the discovery as commercial. This declaration is a critical step in transitioning to the development phase.

- Submission of a Development Plan: Along with the declaration of commerciality, the licensee must submit a comprehensive development plan for the discovered resource. This plan should outline the proposed methods for developing and producing the resource, including the necessary infrastructure, technology, and timeline.

What are the conditions for commencement of production operations in Mozambique oil and gas sector?

If the above conditions for transitioning from exploration to development and production are met, then an application for a production licence must be made.

1. Application for a Production Licence

Once a discovery is declared commercial, the licensee must apply for a production licence. This application is submitted to the Ministry of Mines and Energy and must include the approved development plan, environmental impact assessments, and other relevant documentation.

An application for a production licence must, among other things, contain a development plan, with a proposed programme of production operations and the processing of the petroleum in question, which must include:

- the date on which it is estimated the applicant will commence the production of the petroleum in question;
- an estimate of the capacity of such production and the extent of the operations to be carried out;
- an estimate of the overall recovery of such petroleum and of any by-products recovered in processing such petroleum;
- the nature of such petroleum and by-products;
- the arrangements made for the sale of such petroleum and by-products;
- how the applicant intends to prevent pollution, deal with waste, safeguard natural resources, and minimise the effect of such operations on land adjoining the production area;
- separate decommissioning plans in respect of the production area and any area outside such production area where activities in connection with the production operations are being carried out, setting out to the satisfaction of the Minister (acting in consultation with the ministers responsible for the environment, fisheries, and finance) the measures proposed to be taken after cessation of such production operations to remove or otherwise deal with all installations, equipment, pipelines, and other facilities, whether onshore or offshore, erected or used for such operations, and to rehabilitate land disturbed by way of such operations, for which plans must include:

1. the estimated date when such decommissioning would occur;
2. the extent of such decommissioning;

3. how such decommissioning would take place;
4. the estimated cost of such decommissioning; and
5. such other measures or information as the Minister may determine; and

- statement setting out any significant effect that the carrying out of such production operations is likely to have on the environment, and how the applicant intends to control or eliminate such effect.

3. Development Plan Approval

- The development plan submitted by the licensee is reviewed by the Ministry of Mines and Energy. The review focuses on the technical, financial, and environmental aspects of the proposed development to ensure that it aligns with national interests and regulatory requirements.

- The Minister of Mines and Energy must approve the development plan before a production licence is issued. This approval signifies that the government is satisfied with the proposed approach to developing the resource.

4. Granting of Production Licence

- Upon approval of the development plan and the satisfaction of all regulatory requirements, the Ministry of Mines and Energy will issue a production licence to the licensee. The production licence grants the licensee the right to develop and produce petroleum from the specified area.

- Licence Conditions: The production licence will include specific conditions related to the development and production activities, such as work commitments, local content requirements, royalty payments, and ongoing environmental management obligations.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

There are currently no statutory limitations for investment into the processing and refining of oil and gas produced. Further, laws relating to land acquisition, environment, investment and the production of hazardous substances will apply and to that end, various statutory consents and approvals may be triggered, before implementing the investment.

What are the requirements and restrictions for the export of oil and gas produced in jurisdiction? Please specify any applicable domestic supply requirements.

Crude oil:

There is no domestic supply obligation and no provision is made for cross-border sales and deliveries of crude oil or crude oil products under the Petroleum Act. Although the price-setting regime for crude oil products is not regulated under the Petroleum Act, the Model Petroleum Agreement typically provides that crude oil produced and saved from the licence area may be sold or otherwise disposed of at competitive market prices, ie, a sale between a willing purchaser and a willing seller acting in good faith. In the event of any dispute arising between the licence-holder and the Minister of Mines and Energy concerning the pricing of crude oil, the dispute will be resolved by a sole expert to be appointed by agreement between the parties or, failing agreement, by the president of the British Institute of Petroleum.

Export levy:

The Export Levy Act 2 of 2016 provides for the imposition of an export levy on certain goods. A 1.5% rate is levied on unrefined crude oil of all types exported from Namibia. Refined oil of all types carries a zero rate.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

There is a viable and competitive oil and gas services industry in Namibia. Namibia has made significant oil and gas discoveries in recent years, particularly in offshore blocks. These discoveries have attracted major international oil companies, including TotalEnergies and Shell, which are investing heavily in exploration and development. This interest has the potential to stimulate the growth of the oil and gas services industry in the country and has resulted in several oil and gas services companies, establishing a local presence in Namibia.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

There are no entry requirements for oil and gas services companies apart from the registration requirements at the Registrar of Companies when such services companies either want to register a branch in Namibia (an external company) or whether they want to incorporate a company in Namibia. There are, accordingly, also no local participation requirements.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies in Mozambique ?

There are no local content requirements applicable in the operation of oil and gas services companies. Please however consider our submission on the Ministry of Mine and Energy's proposed local content policy, alluded to above.

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?

Applicable law:

The Environmental Management Act 7 of 2007 (EMA) requires holders of petroleum licences to be issued with ECC before they commence activities in terms of their licences. The EMA is accompanied by two sets of regulations. The first set of regulations lists the activities that may not be conducted without an ECC, published according to the terms of Section 27 of the EMA. The second set deals with environmental impact assessments (the "EIA Regulations") and was published according to the terms of Section 56 of the EMA. The state is also bound by the EMA.

A competent authority:

A "competent authority" refers to an organ of state which is responsible, under any law, for granting or refusing an authorisation, including a competent authority identified in terms of the EMA. For example, the Minister of Mines and Energy is the relevant competent authority in respect of mineral and petroleum exploration and production operations. An "authorisation" refers to an approval, licence, permit, or other authorisation by a competent authority in respect of a listed activity.

Where no person or authority is charged with the responsibility of granting authorisations in respect of a listed activity according to the terms of any other law, the Minister must, in the same notice that lists the activities that may not be undertaken without an environmental clearance certificate, identify a person or authority who or which is responsible for granting authorisation in respect of that activity. The Minister may be identified as the competent authority. The Minister may also agree with an organ of state that applications for ECC in respect of which the Minister is identified as the competent authority, may be dealt with by that organ of state.

Environmental clearance certificate:

Before submitting an application for an environmental clearance certificate, the proponent must determine whether the activity for which the clearance certificate is required is in fact a listed activity. In order to do so, the proponent may consult with the Environmental Commissioner, the competent authority, or any relevant guidelines. If the proponent has determined that the proposed activity is a listed activity, they must apply for an environmental clearance certificate. The acquisition of seismic data and the drilling of wells are accepted to be listed activities and, as such, require ECC before commencement of such projects.
Application for this certificate must be made by the proponent on the prescribed form and in the prescribed manner (accompanied by the prescribed fee) to the relevant competent authority.

The proponent must designate an environmental assessment practitioner (EAP) to manage the assessment process. The EAP must have knowledge of, and experience in, conducting assessments, including knowledge of the EMA and the EIA regulations and guidelines that have relevance to the proposed activity.

Environmental Impact Assessment (EIA):

- An EIA is required for all oil and gas projects. The EIA process involves assessing the potential environmental impacts of the project, including impacts on biodiversity, water resources, air quality, and local communities.

- Public consultation is a mandatory part of the EIA process (described below), ensuring that stakeholders, including local communities, have the opportunity to express their views on the proposed project.

- An Environmental Management Plan (EMP) must be submitted as part of the EIA process. The EMP must be approved by the Ministry of Environment, Forestry, and Tourism before development activities can commence.

Public consultation process:

After submitting an application for an environmental clearance certificate, the proponent must conduct a public consultation process, which must be completed within 21 days. This process must be conducted whether or not an assessment is required. The person conducting the public consultation process must give notice of the application to all potential interested and affected parties so that the application can be subject to public consultation.

The proponent must consider all objections and representations received from interested and affected parties following the public consultation process and subject the proposed application to scoping by assessing the potential effects of the proposed listed activity on the environment, whether and to what extent these potential effects can be mitigated, and whether there are any significant issues and effects that require further investigation.

After submission of an application for an environmental clearance certificate, the proponent must prepare a scoping report and give all interested and affected parties an opportunity to comment on the scoping report.

A registered interested or affected party is entitled to comment, in writing, on all written submissions made to the Environmental Commissioner by the applicant responsible for the application. The party may also bring to the attention of the Environmental Commissioner any issues which they believe may be of significance to consideration of the application, as long as comments are submitted within seven days of notification of an application or of receiving access to a scoping report or an assessment report, or of the interested and affected party disclosing any direct business, financial, personal, or other interest which that party may have in the approval or refusal of the application.

Before the applicant submits a report compiled in terms of the EIA Regulations to the Environmental Commissioner, the applicant must give registered interested and affected parties access to, and an opportunity to comment in writing on, the report. Here, the "report" includes scoping reports, amended and resubmitted scoping reports, assessment reports, and amended and resubmitted assessment reports.

Any written comments received by the applicant from a registered interested or affected party must accompany the report when it is submitted to the Environmental Commissioner. A registered interested or affected party may comment on any final report that is submitted by a specialist reviewer for the purposes of the EIA Regulations where the report contains substantive information which has not previously been made available to a registered interested or affected party.

The applicant responsible for an application must ensure that the comments of interested and affected parties are recorded in reports submitted to the Environmental Commissioner in terms of the EIA Regulations. Comments by interested and affected parties on a report which is to be submitted to the commissioner may be attached to the report without recording those comments in the report itself.

Are there any consequences of a breach of environmental obligations for the rights holder?

Penalties for breach of environmental obligations range from fines to potential criminal liability and imprisonment. Fines in terms of the Petroleum Act may amount to NAD20 000 (sections 38 and 53 of the Petroleum Act) should the holder of an exploration and/or production licence fail to prevent wastage, spillage or pollution. However, in terms of the EMA, should a person undertake a listed activity without having obtained an environmental clearance certificate then such a person may be liable on conviction to a fine not exceeding NAD500 000 or to imprisonment for a period not exceeding 25 years or to both such fine and such imprisonment.

Further, if an operator fails to comply with the conditions of the ECC, the Ministry of Environment, Forestry, and Tourism (MEFT) may revoke or suspend the ECC. Without a valid ECC, the operator would be unable to legally continue their operations.

The Ministry of Mines and Energy may suspend or revoke the operator's exploration or production licence if they breach environmental obligations, particularly if the breach is serious or repeated.

Operators may be held liable for the costs of environmental restoration and may be required to compensate the government or affected parties for any environmental damage caused by their operations.

In cases where the breach of environmental obligations violates terms agreed upon in contracts with the government or other parties, the contract may be terminated, and the operator may face additional financial penalties.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

In the instance where criminal sanctions are imposed by environmental legislation, the Criminal Procedure Act 51 of 1977 (the "CPA") applies. Section 332 of the CPA makes specific provision for the prosecution of corporations and members of associations. It is stated that for the purpose of imposing upon a corporate body criminal liability for any offence, whether under any law or at common law;

- any act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or servant of that corporate body;

- and the omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or servant of that corporate body,

in the exercise of his powers or in the performance of his duties as such director or servant or in furthering or endeavouring to further the interests of that corporate body, shall be deemed to have been performed (and with the same intent, if any) by that corporate body or, as the case may be, to have been an omission (and with the same intent, if any) on the part of that corporate body.

Therefore, when an offence has been committed, whether by the performance of any act or by the failure to perform any act, for which any corporate body is or was liable to prosecution, any person who was, at the time of the commission of the offence, a director or servant of the corporate body shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it, and shall be liable to prosecution therefor, either jointly with the corporate body or apart therefrom, and shall on conviction be personally liable to punishment therefor.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

The Regulations relating to the Health, Safety and Welfare of Persons Employed, and Protection of Other Persons, Property, the Environment and Natural Resources, in, at or in the vicinity of Exploration and Production (Government Notice 190 of 1999) (**"1999 Regulations"**) published according to the terms of the Petroleum Act deal with the health, safety, and welfare of persons employed, and the protection of other persons, property, the environment and natural resources, in, at, or in the vicinity of exploration and production areas. These regulations are administered by the MME and are binding on all licence-holders. Extensive employee health and safety regulations published in terms of labour legislation are also applicable and binding on all employers. These regulations are administered by the Ministry of Labour. They require, among other things, that a health and safety representative be appointed.

Which entity is responsible for the enforcement of health and safety regulations or obligations in the gas sector?

The MME as well as the Ministry of Labour in terms of the above sets of regulations, respectively.

Are there any consequences of a breach of these requirements for the rights holder?

Penalties range from fines to potential criminal liability and imprisonment. Fines in terms of the 1999 Regulations shall not exceed NAD20 000 if an operator contravenes or fails to comply with the aforesaid regulations. Fines in terms of the Regulations relating to the Health and Safety of Employees at Work (Government Notice 156 of 1997) typically shall not exceeding NAD2 000.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

The same is applicable as for a breach of environmental obligations in that the Criminal Procedure Act 51 of 1977 (the "CPA") again applies where criminal sanctions are imposed for a breach of health and safety regulations. For the sake of completeness, the provisions of section 332 will be reiterated. Section 332 makes provision for the prosecution of corporations and members of associations. It is stated that for the purpose of imposing upon a corporate body criminal liability for any offence, whether under any law or at common law;

- any act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or servant of that corporate body;

- and the omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or servant of that corporate body,

in the exercise of his powers or in the performance of his duties as such director or servant or in furthering or endeavouring to further the interests of that corporate body, shall be deemed to have been performed (and with the same intent, if any) by that corporate body or, as the case may be, to have been an omission (and with the same intent, if any) on the part of that corporate body.

Therefore, when an offence has been committed, whether by the performance of any act or by the failure to perform any act, for which any corporate body is or was liable to prosecution, any person who was, at the time of the commission of the offence, a director or servant of the corporate body shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it, and shall be liable to prosecution therefor, either jointly with the corporate body or apart therefrom, and shall on conviction be personally liable to punishment therefor.

DECOMMISSIONING

What are the decommissioning and abandonment requirements and obligations for oil and gas rights holders in your jurisdiction?

to its terms, an application for a petroleum licence must contain a proposed programme of production operations and of the processing of the petroleum in question, which must include separate decommissioning plans in respect of the production area, and any area outside the production area, within which activities in connection with the production operations are being carried out. This must set out to the satisfaction of the Minister of Mines and Energy (acting in consultation with the Minister of Environment and Tourism, the Minister of Fisheries and Marine Resources, and the Minister of Finance), the measures proposed to be taken after cessation of the production operations to remove or otherwise deal with all installations, equipment, pipelines, and other facilities, whether onshore or offshore, erected or used for the purposes of the operations, and to rehabilitate land disturbed by way of the operations. It must include:

- the estimated date by which such decommissioning will occur;
- the extent of the decommissioning;
- the manner in which the decommissioning will take place;
- the estimated costs of the decommissioning; and
- such other measures or information as the Minister may require.

On a date before the estimated date on which 50% of the estimated recoverable reserves of petroleum in the production area would have been produced, the holder of a production licence must establish a trust fund for the purposes of decommissioning facilities. A separate trust fund must be established in respect of the decommissioning of facilities in any area outside the production area where the facilities are used in connection with the production operations of the holder of the production licence in question. The decommissioning trust funds are exempt from all taxes, except those imposed according to the terms of the Petroleum Taxation Act. The holder of the licence is responsible for meeting the full costs of decommissioning in accordance with the decommissioning plan, notwithstanding the fact that there may be a shortfall between the full costs and the accumulated amount in the trust fund.

Are there any particular events or timelines that trigger decommissioning obligations?

On a date one year before the estimated date on which 50% of the estimated recoverable reserves of petroleum in the production area would have been produced, the holder of the production licence must review and, if necessary, revise the decommissioning plan. The Minister may, acting in consultation with the Minister of Environment and Tourism, the Minister of Fisheries and Marine Resources, and the Minister of Finance, approve the reviewed or revised decommissioning plan or refer it back to the holder of the production licence concerned to make such amendments as the Minister may deem necessary.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

The holder of a production licence must pay a royalty to the State Revenue Fund. This payment is to be made quarterly, specifically on or before the last day of each month following the end of each quarter. The royalty is calculated based on the "market value" of the petroleum produced. The method for determining this market value is specified in the terms and conditions of the production licence.

- The standard royalty rate is 12.5% of the market value of the petroleum produced and saved in the production area during each quarter.

- A reduced royalty rate of 5% applies if the production licence was issued to a person who was granted an exploration licence after the commencement of section 5 of the Petroleum Laws Amendment Act, 1998. This reduced rate applies to the petroleum produced in the area covered by the production licence.

The **tax** regime for petroleum exploration and production activities is regulated under the Petroleum Taxation Act 3 of 1991 (the "Petroleum Taxation Act") as amended by the Petroleum Laws Amendment Act of 1998. The aforesaid Act provides for the levy and collection of petroleum income tax and an additional profit tax. The rate of petroleum income tax is 35% of the taxable income received or accrued by, or in favour of, a person from a licenced area. Each licenced area is assessed separately and losses in one area cannot be offset against profits in another. The Petroleum Taxation Act further provides for the levying of additional profit tax in respect of the first, second, and third accumulated net cash position determined with respect to every tax year.

Annual surface charges are also payable by holders of exploration and production licences, calculated on the number of square kilometres included in the block to which the licence relates.

Other tax laws that apply to the oil industry are as follows:

- The Income Tax Act 24 of 1981, as amended, which provides for withholding tax of 10% imposed on all management, consulting, technical, administrative, and entertainment services paid by a resident to a non-resident, subject to the provisions of any double-taxation agreements. Service fees payable to foreign directors and foreign entertainment fees attract a withholding tax of 25%.
- The Value Added Tax Act 10 of 2000, which currently rates VAT at 15%.
- The Stamp Duties Act 15 of 1993, which provides for the collection of stamp duties on instruments at rates determined in the schedule to the Act.
- The Export Levy Act 2 of 2016 which imposes an export levy of 1.5% on crude oil and gas of all types.

The Ministry of Finance (through the permanent secretary) is the government body that exercises tax authority.

Are there any tax Incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

Yes, there are tax incentives available in the oil and gas sector.

Capital expenditure:

Prior to production - Accumulated exploration expenditures are deductible in full in the first year of production (unless they have already been transferred to another licence area that has gross income from production).

During production Exploration expenditures incurred when production already commenced are immediately deductible. Accumulated development expenditures are deductible in three equal instalments commencing in the first year of production.

Customs & Excise:

Licence holders are exempt from paying import VAT under Schedule V, paragraph 2(f) of the Value added tax Act 10 of 2000 ("the VAT Act"), and rebated from customs duties (full rebate of duty less ad valorem duties) in terms of rebate item 460.23, Schedule No. 4, Part 2 of the Customs and Excise Act, Act No. 20 of 1998 ("the Customs and Excise Act").

The goods imported by the licence holders must be for use solely in operations in connection with the prospecting for or the mining of natural oil or natural gas to qualify for exemption from import VAT, and subject further to the provisions of rebate item 460.23 above for rebate of customs duties, to the extent indicated.

Further, there is an exemption applicable of a remission or deferment of royalties payable in terms of sections 62 and 63 of the Petroleum Act. It is stated in the Petroleum Act that the Minister of Mines and Energy may, in concurrence with the Minister of Finance, on application made to him or her by the holder of a production licence remit wholly or partly any royalty payable in terms of section 62 of the Petroleum Act or defer payment of any such royalty. The Minister is also entitled to refund wholly or partly any royalty paid in terms of section 62. The Minister is entitled to remit, defer or refund royalties on such conditions as he or she may determine.

What is the procedure for obtaining any applicable incentives and exemptions?

Application for the remission, deferment or refund of a royalty in terms of sections 62 and 63 of the Petroleum Act must be made to the Minister of Mines and Energy. There is no procedure set out in the Petroleum Act for the above application to the Minister.

STABILISATION RIGHTS

Are there any forms of stabilization rights granted to investors in the oil and gas sector?

No, there are no forms of stabilisation rights granted to investors in the oil and gas sector. However, same can still be negotiated between the government of Namibia and the other joint venture parties in a petroleum agreement.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

No, there is not a threshold.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

The government does not generally accede to stabilisation or economic rebalancing provisions in petroleum agreements. Accordingly, there are no notable instances where government's compliance of such agreements have been in issue.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

Please see response above.

DISPUTES

Are there any statutorily prescribed procedures for the resolution of disputes?

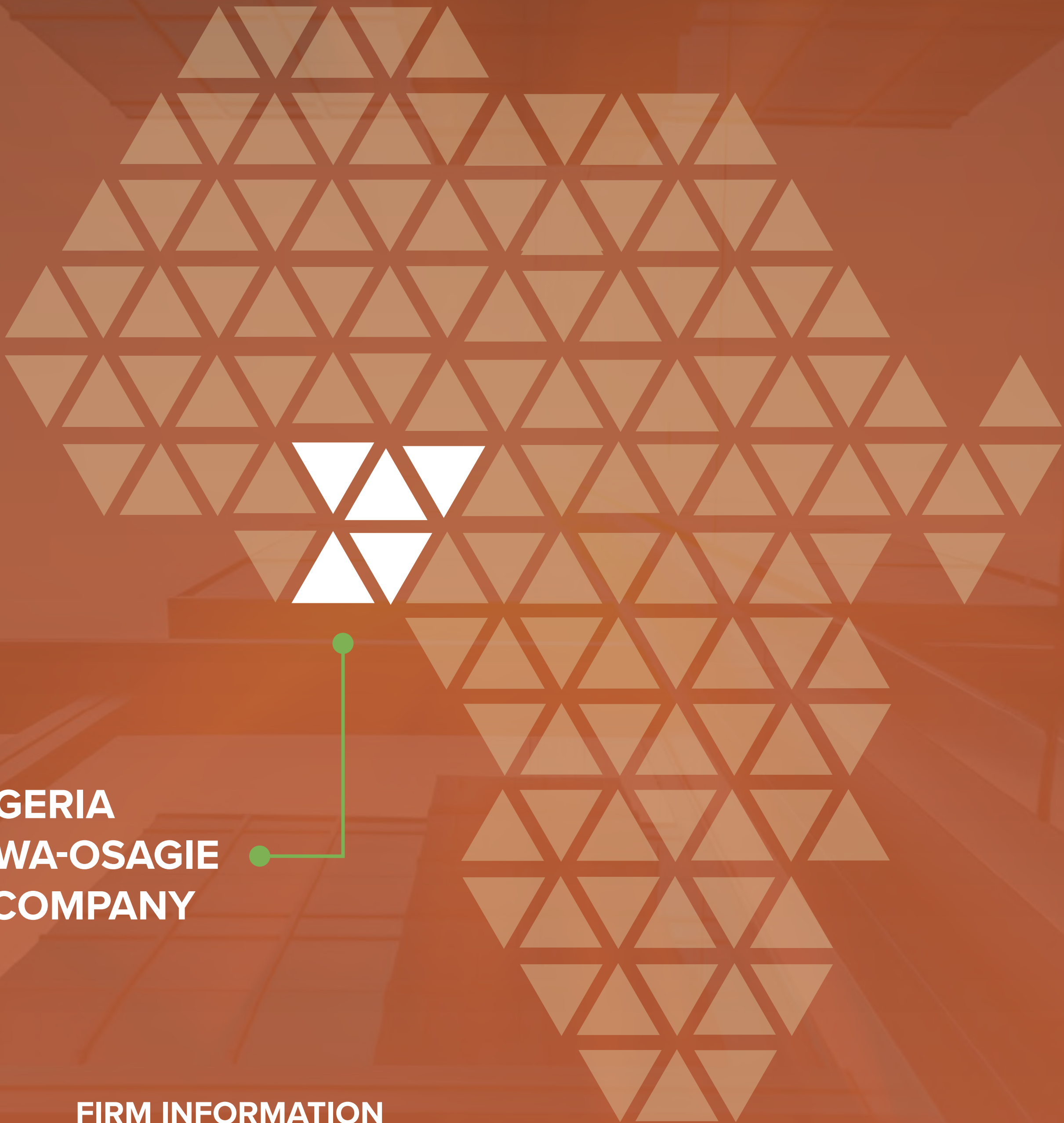
The Model Petroleum Agreement provides that any dispute arising between the parties relating to the construction, meaning, or effect of the agreement, or the rights or liabilities of the parties in terms of the agreement, must first be resolved amicably by negotiation.

If the Minister and the licence-holder fail to resolve a dispute by way of negotiation, either party may submit the dispute to arbitration for final settlement.

Any unresolved dispute will finally be settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law in force on the date on which the agreement is signed. Unless the parties agree otherwise, the arbitration will usually take place in London, England. As far as is practicable, the Minister and the company will continue to implement the petroleum agreement while the arbitration is pending and during arbitration

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

See above response.



NIGERIA
GIWA-OSAGIE & COMPANY

FIRM INFORMATION

Website address : www.giwa-osagie.com
Languages spoken : English
Telephone : +234-1-2707433
Address : 2nd Floor, Wing A, Sapetro Towers, No. 1 Adeola Odeku Street Victoria Island, Lagos
Contact : Mr. Osayaba Giwa-Osagie SAN
Email : giwa-osagie@giwa-osagie.com

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

The laws that regulate the oil and gas sector in Nigeria include:

- Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended)
- Companies and Allied Matters Act, 2020
- Petroleum Industry Act (PIA) 2021
- Oil and Gas Free Zones Authority Act LFN 2004
- National Oil Spill Detection and Response Agency (Establishment) Act 2006
- Environmental Impact Assessment Act LFN 2004
- The International Fund for Compensation of Oil Pollution Damage Ratification and Enforcement Act 2006
- National Office for Technology Acquisition and Promotion (NOTAP) Act LFN 2004
- National Environmental Standards and Regulations Enforcement Agency (Establishment) (Amendment) Act, 2018
- Federal Inland Revenue Service (Establishment) Act 2007
- Oil and Gas Industry Content Development Act 2010
- Companies Income Tax Act LFN 2004 (as amended)
- The Finance Act 2023

In addition, there are subsidiary legislation made pursuant to the aforelisted legislation, which include:

- Regulations made pursuant to the Petroleum Industry Act (PIA) 2021 by Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDRA): Midstream and Downstream Petroleum Operations Regulations 2023, Assignment or Transfer of Licence and Permit Regulations 2023, Petroleum Measurement Regulations 2023, Gas Pricing and Domestic Demand Regulations 2023, Petroleum (Transportation and Shipment) Regulations, the Natural Gas Pipeline Tariff Regulations, amongst others.
- Regulations made pursuant to the Petroleum Industry Act(PIA) 2021 by the Nigerian Upstream Regulatory Commission (NUPRC): The Conversion and Renewal of Oil Prospecting Licence and Oil Mining Leases Regulations 2022, Petroleum Royalty Regulations 2022, Petroleum Licencing Round Regulations 2022, Domestic Gas Delivery Obligations 2022, Nigeria Upstream Petroleum Host Communities Development Regulations 2022, Nigerian Upstream Petroleum Measurement Regulations 2023, Production Curtailment and Domestic Crude Oil Supply Obligation Regulations 2023, Frontier Basins Exploration Fund Administration Regulations 2023, Nigerian Upstream Decommissioning Abandonment Regulations 2023, Significant Crude Oil and Gas Discovery Regulations 2023, Gas Flaring, Venting and Methane Emission (Prevention of Waste and Pollution) Regulations 2023, Nigerian Upstream Petroleum Unitisation Regulations 2023, amongst others.
- The Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2018
- Flare Gas (Prevention of Waste and Pollution) Regulations 2018

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

The regulatory bodies that administer the applicable laws and regulations in the oil and gas sector in Nigeria, and their functions, include:

- Nigerian Upstream Regulatory Commission (NUPRC): Being a creation of the Petroleum Industry Act(PIA) 2021, the Nigerian Upstream Regulatory Commission (NUPRC) is responsible for regulating all environmental matters in respect of upstream petroleum operations except in relation to environmental impact assessment. The Commission is also responsible for the technical, operational and commercial regulation of the upstream petroleum operations.
- Nigerian Midstream and Downstream Petroleum Regulatory Authority(NMDRA): Being a creation of the Petroleum Industry Act(PIA) 2021, the Nigerian Midstream and Downstream Petroleum Regulatory Authority regulates the midstream and downstream petroleum operations, including technical, operational, and commercial activities in that sector while its functions include- to regulate supply, distribution, marketing and retail of petroleum products, to grant, renew, suspend or terminate licenses, permits and authorizations for midstream and downstream petroleum operations.
- Nigerian Content Development and Monitoring Board("NCDMB"): This was established under the Nigerian Oil and Gas Industry Content Development Act 2010 ("Local Content Act"). It is responsible for supervising, coordinating, administering, monitoring and managing the development of Nigerian Content in the Nigerian oil and gas. In addition, it carries out the function of setting guidelines and minimum content levels for project-related activities across the oil and gas value chain.
- National Oil Spill Detection and Response Agency(NOSDRA): It was established pursuant to the National Oil Spill Detection and Response Agency Act 2006 (NOSDRA Act). It is responsible for receiving reports of oil spillages and coordinating oil spill response activities, ensuring compliance with all existing environmental legislation and detecting oil spills in the petroleum sector. In addition, it is in charge of coordinating and implementing the National Oil Spill Contingency Plan for Nigeria in accordance with the International Convention on Oil Pollution Preparedness, Response and Co-operation (see Section 6 of the NOSDRA Act)
- Federal Inland Revenue Service: It was established by the Federal Inland Revenue Service (Establishment) Act. It is responsible for the administration and collection of federal

government revenue in the petroleum industry. It makes rules specifying the form of returns, claims, statements, and notices to be used in assessing petroleum operations, assessing and collecting hydrocarbon tax and enforcing the provisions of the Petroleum Industry Act relating to hydrocarbon tax assessment and revenue collection.
- Corporate Affairs Commission: It was established pursuant to the Companies and Allied Matters Act, 2020 to administer the said Act. It is in charge of regulation and supervision of the formation, incorporation and management of companies including those operating in the Nigerian oil and gas sector.

(see Section 7 of the Companies and Allied Matters Act)
- Oil and Gas Free Zones Authority: It was established pursuant to Section 2 of the Oil and Gas Free Zones Authority Act to regulate Nigeria's oil and gas free zones.
- National Office for Technology Acquisition and Promotion (NOTAP): Where the transfer of technology involves supply of machinery and plant, supply of basic and detailed engineering, use of trademarks or patented inventions, such contracts must be registered otherwise, by Section 7 of NOTAP Act, any profit or benefit due under the contract to the foreign partners cannot be repatriated or transferred to them through the Central Bank of Nigeria.

The notable Policy Institutions saddled with the responsibility of administering the applicable laws and regulations in the oil and gas sector in Nigeria are:

- Ministry of Petroleum Resources: This Ministry is responsible for general supervision over the affairs and operations of the petroleum industry, the implementation and regulation of policies in the Nigerian oil and gas sector. It supervises other agencies in the Petroleum sector such as: Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDRA), Nigerian Upstream Regulatory Commission (NUPRC), etc. The Ministry is headed by the Minister of Petroleum Resources
- Ministry of Finance: This Ministry is responsible for managing the finances of the Federal Government of Nigeria, controlling and monitoring federal revenues and expenditures. The Ministry is headed by the Minister of Finance
- Ministry of Environment: This Ministry is responsible for ensuring environmental protection and the sustainable use of natural resources. It acts in collaboration with other agencies and environmental bodies such as the National Oil Spill Detection and Response Agency ("NOSDRA"), National Environmental Standards and Regulations Enforcement Agency etc. The Minister of Environment heads the Ministry.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

IThe title to all oil and gas in Nigeria is vested in the State, i.e. the Federal Government of Nigeria.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

The applicable rights to undertake exploration and production operations in Nigeria, are as follows:

- Petroleum Exploration Licence (PEL), which may be granted to qualified applicants to carry out petroleum exploration operations on a non-exclusive basis. Though NUPRC has the sole right and title over any acquired raw and interpreted data obtained by a licensee under a petroleum exploration licence(such as the geological, geophysical or geochemical surveys for commercial gain), the licensee is entitled to grant a data use licence to a third party in exchange for commercial gain subject to a written authorisation by the Commission. Thus, the license may cover an area that includes Petroleum Prospecting Licence or Petroleum Mining Lease, provided that the holders of such licences or leases, shall have no obligation to purchase the results of any survey conducted under the petroleum exploration licence;

- Petroleum Prospecting Licence (PPL), which may be granted to qualified applicants to- (i) drill exploration and appraisal wells and do corresponding test production on an exclusive basis, and (ii) carry out petroleum exploration operations on a non-exclusive basis; and

- Petroleum Mining Lease (PML), which may be granted to qualified applicants to- (i) win, work, carry away and dispose of crude oil, condensates and natural gas on an exclusive basis (ii) drill exploration and appraisal wells and carry out the related test production on an exclusive basis, and (iii) carry petroleum exploration operations on a non-exclusive basis

  (see Section 70(1) of the Petroleum Industry Act 2021)

The NUPRC periodically publishes a licensing round plan to serve as a guide.

The pre-requisite to qualify to acquire the applicable rights to undertake exploration and production operations in Nigeria is that-

a. Such an applicant must be a company duly incorporated and validly existing in Nigeria under the Companies and Allied Matters Act.

b. Compliance with the provisions of the Petroleum Industry Act 2021

(see Section 70(2) of the Petroleum Industry Act 2021)

Please provide an overview of the procedure for obtaining such exploration and production rights.

The NUPRC is responsible for the grant of petroleum exploration licences (see Section 71(1) of the Petroleum Industry Act 2021). Petroleum Prospecting Licence is granted by the Minister of Petroleum Resources on the recommendation of the NUPRC. NUPRC may grant a petroleum exploration license to a qualified person with respect to the operations to be carried out under the licence on such terms and conditions as it may determine. The procedure for obtaining such exploration and production operations rights in Nigeria are as follows:

The application is to be made with the necessary supporting documentation. NUPRC periodically publish a licensing round plan accompanied with the model licence for the PPL or model lease for the PML for the bid round which include the –

(a) licence or lease acreages, the term and minimum work obligations;
(b) requirements to be fulfilled by the bidders and the pre-qualification criteria, as the case may be;
(c) bid parameter;
(d) list of documents required and criteria for the evaluation of technical capacity, financial competence and legal status of interested parties, including technical and financial assessment of the bid; and
(e) details and cost for the acquisition of relevant data and studies.

(see Sections 73 and 75 of the Petroleum Industry Act 2021)

An applicant shall satisfy the legal, financial and technical criteria to qualify for participation in the licensing round process (see the Petroleum Licensing Round Regulations, 2022). A company or consortium of companies cannot participate in a licensing round unless it has first been pre-qualified. An application for pre-qualification shall be accompanied by the payment of a fee as prescribed in the licensing round guidelines issued by the Commission.

The legal criteria to qualify for participation in the licensing round process include —

(a) incorporation of a company pursuant to the provisions of section 21 of the Companies and Allied Matters Act, No. 3, 2020 and submission of the relevant incorporation documents; and
(b) such other information as may be prescribed in the licensing round guidelines issued by the NUPRC.

The technical criteria required to qualify for participation in the licensing round process include the following —

(a) evidence of the oil and gas fields operated, for a duration stipulated in the licensing round guidelines prior to the commencement date of the licensing round;
(b) the total level of daily net production to the operator, which shall as a minimum be equal to the number of fields and daily net production indicated in the licensing round guidelines to pre-qualify as operator, except where exempted under the licensing round guidelines; and
(c) such other information as may be prescribed in the licensing round guidelines issued by the Commission.

Where the license or lease includes the obligation to drill one or more exploration wells, the interested party shall list the exploration wells drilled previously as an operator which shall as a minimum be the number established in the licensing round guidelines for a pre-qualified operator. Where an applicant is a newly incorporated company in Nigeria, it may provide information of the parent company or parent companies.

Are there any fees and charges applicable to obtaining these rights?

Yes, there are charges applicable to obtaining exploration and production operations rights in Nigeria.

Paragraph 8 of Upstream Petroleum Fees and Rent Regulations states that the NUPRC shall not commence any procedure for granting a lease or licence or considering a permit, authorization, approval, renewal or termination or such other activities as it may specify from time to time unless the correct applicable fee has been paid in full by the company. Schedule A of the Upstream Petroleum Fees and Rent Regulations.

The financial criteria required to pre-qualify for participation in the licensing round process for obtaining such exploration and production rights are such financial information as may be prescribed in the licensing round guidelines issued by the NUPRC. By virtue of Petroleum Licencing Round Regulations 2022, an applicant who has been pre-qualified to participate in the bid, shall pay a bid administration fee as may be prescribed in the licensing round guidelines.

For applications for permit, the following fees are applicable as set out in the Upstream Petroleum Fees and Rent Regulations:

- Application for a PEL $5,000
- Application for a renewal of a PEL $5,000
- Application for the renewal of a PML producing 5000 bopd or more $ 2,000,000
- Application for the renewal of a PML producing less than 5000 bopd $ 100,000
- Application for the renewal of a PML producing non-associated natural gas $ 10,000

What is the duration of the exploration and production rights?

The duration of the exploration and production operations rights in Nigeria are-

- PEL: It is valid for 3 years tenure and may be renewable for an additional period of 3 years subject to fulfilment of prescribed conditions.

- PPL: Of note, a PPL for onshore and shallow water acreages shall be for not more than six years; comprising of the initial exploration period of three years and an optional extension period of three years. A PPL for deep offshore and frontier acreages shall be for a duration of not more than 10 years, comprising an initial exploration period of five years and an optional extension period of five years

On the other hand, a PML has a maximum term of 20 years which term includes the development period of the leased area. However, a PML that continues to produce in paying quantities may be renewed by the NUPRC for one or more successive additional terms of not more than 20 years each subject to the provisions of the Petroleum Industry Act 2021 (See sections 71, 72, 77 and 86 of the Petroleum Industry Act 2021)

Are the exploration and production rights renewable? What are the renewal processes?

Yes, the exploration and production rights are renewable. The Petroleum Exploration License is renewed by applying to the NUPRC, whilst the Minister of Petroleum Resources grants renewal of Petroleum Prospecting License upon recommendation of the NUPRC serving as the Nigerian petroleum industry data bank with the responsibility of maintaining the public register of renewals, licences and leases granted by the Minister and permits and other authorisations issued by the Commission.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

Yes, the State has both direct and indirect interest in exploration, development and production operations. The government of Nigeria through the NNPCL reserves the right at the time of award or renewal of a license, or on application for conversion as the case may be to elect to participate in the exploration, development and production operations upon the grant of a licence. Thus, the contractual model that is awarded determines whether the government elects to exercise its right. Of note, NNPCL does not necessarily based on such participation have the right to the operatorship unless otherwise agreed by parties. The Federal Government of Nigeria through NNPCL's participation will be a maximum of 60 per cent carried interest with no requirement for an upfront payment by the government. A licence or lease cannot be granted by the Minister of Petroleum Resources in Nigeria unless the model licence, contains an obligation to comply with fiscal obligations and other provisions related to fees, rents, royalties, etc.

Thus, the model licence and model lease must comply with the provisions of the Petroleum Industry Act 2021 and may contain the following additional contractual provisions - a concession agreement for exploration, development and production of petroleum, which may include an incorporated or unincorporated joint venture with the National Petroleum Company (NNPC) Limited(a for-profit oil company in Nigeria formerly government-owned corporation but later transformed), to include a carried interest provision whereby the Government through the NNPC Limited has the right to participate up to 60% in the contract or identified as a bid parameter.
(see Section 85 of the Petroleum Industry Act 2021)

Of note, where there is a bilateral or multi-lateral agreement between Nigeria and another country, the Government may, for strategic purposes and in return for substantive benefits to the nation, direct NUPRC to negotiate and award a PPL or PML to a qualified investor identified in the agreement or treaty, notwithstanding that there is an earlier bidding parameter circulated for PPL or PML by the Nigerian Upstream Regulatory Commission (NUPRC).
(see Section 74(3) of the Petroleum Industry Act 2021)

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

Yes, there are certain requirements for local participation in oil exploration and production rights in Nigeria. For instance, the Nigerian Oil and Gas Industry Development Act 2010 also known as the Local Content Act provides that Nigerian independent operators shall be given first consideration in the award of oil blocks, oil field licences and oil lifting licences; amongst others.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

Yes, there are special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights in Nigeria. Of note, Section 20(4) of the Companies and Allied Matters Act, 2020 provides that- "Subject to the provisions of any enactment regulating the rights and capacity of aliens to participate or undertake in a trade or business, an alien or a foreign company may join in the formation of a company".

Foreign persons can acquire exploration and production rights only through strategic partnerships with Nigerians or Nigerian companies. Thus, Section 78 of the Companies and Allied Matters Act, 2020 provides inter alia that a foreign company intending to carry on business is obligated to incorporate a separate entity, in the form of a company, in Nigeria before participating in any such business in Nigeria. The provisions of Section 78 of the Companies and Allied Matters Act, 2020 do not apply to foreign companies who have been granted an exemption under the Act or granted exemption under any treaty to which Nigeria is a party.

Section 17 of Nigerian Investment Promotion Commission (NIPC) Act further provides that a non-Nigerian whether company or individual may invest and participate in the operation of any enterprise in Nigeria except those in the negative list. The negative list includes arms and ammunition; narcotic drugs and psychotropic substance; para-military and military wears.

The pre-requisite to qualify to acquire the applicable rights to undertake exploration and production operations in Nigeria is that-

a. Such an applicant must be a company duly incorporated and validly existing in Nigeria under the Companies and Allied Matters Act.
b. Compliance with the provisions of the Petroleum Industry Act 2021
(see Section 70(2) of the Petroleum Industry Act 2021)

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

Yes, there are specific local content requirements in the oil and gas industry in Nigeria. The Petroleum Industry Act is aimed at stimulating local participation in the oil and gas industry. The Federal Government of Nigeria has developed various initiatives and strategies to increase indigenous businesses' participation in the Nigeria oil and Gas Industry.

Under the Local Content Act, "Nigerian company" is defined as "a company formed and registered in Nigeria in accordance with the provision of Companies and Allied Matters Act with not less than 51% equity shares by Nigerians". In line with the provisions of the Nigerian Oil and Gas Industry Content Development Act, 2010 (Local Content Act), oil and gas services companies must have not less than 51% equity shares held by Nigerians

Section 41(2) of the Local Content Act provides that "international or multinational companies working through their Nigerian subsidiaries shall demonstrate that a minimum of 50% (fifty percent) of the equipment deployed for execution of work are owned by the Nigerian subsidiaries".

An innovation introduced by the Petroleum Industry Act ("PIA") 2021 is checkmating the unnecessary holding on unproductively to large parcels depriving others without making any commercial use of same or conducting any operations in the field. In furtherance of the indigenization policy marginal fields are granted to indigenous companies to afford them the opportunity of participatory rights in oil acreages. Section 94 of the Petroleum Industry Act (PIA) defines a marginal field as "a field or discovery which has been declared a Marginal Field prior to 1st January 2021 or which has been lying fallow without activity for seven years after its discovery prior to the effective date".

Two categories of marginal fields identified in the Petroleum Industry Act are relevant here-
a. Producing Marginal Fields: These are marginal fields which are already producing prior to 1st January 2021. For such fields, the Petroleum Industry Act allows the operators to continue operating under the original royalty rates and farm out agreements. However, a conversion to a petroleum mining lease is required within 18 months from the effective date of the Petroleum Industry Act.
b. Non-Producing Marginal Fields: These are discovery fields declared as marginal fields prior to 1st January 2021, but which are not producing. Such fields are required to be converted to a Petroleum Prospecting License (PPL). The PPL for onshore and shallow water acreages will be valid for a maximum period of 6 years, consisting of an initial exploration period of 3 years and an optional extension period of 3 years.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

The requirements, consents or restrictions for the transfer or assignment of exploration and production rights are as follows:

- A licensee or lessee wishing to assign, novate or otherwise transfer its interest shall make an application for approval of the transfer of a licence or lease to the Commission in the format prescribed by the NUPRC

- The consummation and details of transfer or assignment of exploration and production rights in entities holding exploration and production rights shall be- (a) fully disclosed to the Federal Inland Revenue Service by the parties to the transaction; and (b) published in the Federal Government Gazette by the Nigerian NUPRC

- Section 95(11) of the Petroleum Industry Act 2021 provides that the Minister of Petroleum may grant consent to an assignment, novation or transfer of a petroleum prospecting licence or petroleum mining lease, subject to the following terms and conditions which the NUPRC may consider appropriate; that the proposed transferee–
  - is a company incorporated in Nigeria;
  - is of good reputation and standing;
  - has sufficient technical knowledge, experience and financial resources to enable it effectively carry out all responsibilities of a licensee or lessee under the licence or lease; and
  - shall comply with the Federal Competition and Consumer Protection Act, 2018.

There are statutory pre-emption rights afforded the NNPCL in disposals/assignments in the context of joint venture operations. Once incorporated, the joint venture company - (a) before any sale of shares in an incorporated joint venture company by any shareholder, the other shareholders (including NNPC Limited) shall have the right of first refusal on such transaction at fair market value and appropriate ministerial consent (b) each incorporated joint venture company shall have its head office and main operational offices in Nigeria.
(see Para. 2 of the Second Schedule of the Petroleum Industry Act 2021)

Concerning fees for transfer or assignment of exploration and production rights, in particular, for requests for approval to assign or sublet a licence or lease, the applicable fee as set out in Schedule A of the Upstream Petroleum Fees and Rent Regulations is- $10,000.

Paragraph 7 of the Upstream Petroleum Fees and Rent Regulations provides that proof of payment of the required fees shall accompany any request or application pursuant to Schedule A and shall be provided prior to the granting of a licence or lease. The fee shall be paid by the company making the request or application, which in case of an assignment shall be the assignor.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

Yes. Firstly, it is important to note that a change of control in the holder of a Licence or lease shall be deemed to be an assignment under Section 95 of the Petroleum Industry Act 2021; "change of control" means any person or persons acting jointly or in concert, to acquire direct or indirect beneficial ownership of a percentage of the voting power of the outstanding voting securities of the holder, by contract or otherwise, that exceeds 50% at any time. A holder of a petroleum exploration licence shall not assign, novate or transfer his licence or lease or any right, power or interest without prior written consent of the NUPRC.

The consummation and details of change of control in entities holding exploration and production rights shall be- (a) fully disclosed to the Federal Inland Revenue Service by the parties to the transaction; and (b) published in the Federal Government Gazette by the NUPRC.

Section 95(11) of the Petroleum Industry Act 2021 provides that the Minister of Petroleum may grant consent to an assignment, novation or transfer of a petroleum prospecting licence or petroleum mining lease, subject to the following terms and conditions which the NUPRC may consider appropriate; that the proposed transferee –

(a) is a company incorporated in Nigeria;
(b) is of good reputation and standing;
(c) has sufficient technical knowledge, experience and financial resources to enable it to effectively carry out all responsibilities of a licensee or lessee under the licence or lease; and
(d) shall comply with the Federal Competition and Consumer Protection Act, 2018.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

A licensee or lessee wishing to assign, novate or otherwise transfer its interest shall make an application for approval of the transfer of a licence or lease to the NURPC in the format prescribed by the NURPC. NURPC shall within 60 days of the receipt, act on the application of the licensee or lessee and where no response on the application has been received within 60 working days from the receipt of the recommendation of the NURPC, the consent of the Minister of Petroleum shall be deemed to have been granted. NURPC shall communicate the refusal or approval of an application for an assignment, novation or transfer of a licence or lease in writing to the applicant.

A condition applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control is that such consummation and details shall be –

- fully disclosed to the Federal Inland Revenue Service by the parties to the transaction; and
- published in the Federal Government Gazette by the NUPRC

Section 95(11) of the Petroleum Industry Act 2021 provides that the Minister of Petroleum Resources may grant consent to an assignment, novation or transfer of a PPL or PML, subject to the following terms and conditions the Commission may consider appropriate, that the proposed transferee –

(a) is a company incorporated in Nigeria;
(b) is of good reputation and standing;
(c) has sufficient technical knowledge, experience and financial resources to enable it effectively carry out all responsibilities of a licensee or lessee under the licence or lease; and
(d) shall comply with the Federal Competition and Consumer Protection Act, 2018.

Are rights holders allowed to create security over their exploration and production rights?

Yes, a holder of a licence or lease may by way of security, wholly or partly assign, pledge, mortgage, charge or hypothecate its interests under the applicable licence, lease or grant a security interest.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations ?

Yes, there are prescribed durations for exploration operations. Exploration activities conducted pursuant to a PEL are monitored and administered by the NUPRC in accordance with regulations made under the Petroleum Industry Act. A petroleum exploration licence is for 3 years and may be renewed for an additional period of 3 years subject to the fulfilment of prescribed conditions.
(see Section 71 of the Petroleum Industry Act 2021)

Are there prescribed minimum work and expenditure obligations for exploration operations in the oil and gas sector?

Yes, there are prescribed minimum work and expenditure obligations for exploration operations; these obligations will vary according to the licence granted or any further agreements. Exploration activities conducted pursuant to a PEL are monitored and administered by the NUPRC in accordance with regulations made under the Petroleum Industry Act 2021. Similarly, for Petroleum Prospecting Licence there are prescribed minimum work and expenditure obligations. It is granted after a transparent and competitive bidding process; the licensing round guidelines is accompanied with the model licence for the petroleum prospecting licence clearly stating the minimum work programme and minimum level of investment.

Are there any compulsory relinquishment requirements?

Yes, there are compulsory relinquishment requirements, as follows:

- Upon the expiration of any significant gas discovery retention period in respect of a PPL, every area relating to the significant gas discovery retention area shall be relinquished, unless the applicable licensee has declared a commercial discovery in such significant gas discovery retention area.

- An area or zone relinquished, shall be vested in the Government and administered by the Commission and the relinquishments shall be in a north-south, east-west direction and defined in a rectangular or square shaped compact unit.

- Any rent paid in respect of an area or zone that is relinquished shall not be refundable and such relinquishment shall be without prejudice to any obligation or liability imposed by or incurred under the applicable Licence or Lease.

In particular, a Licensee of a PPL may voluntarily relinquish parcels and sub-parcels of frontier acreages from petroleum operations in Nigeria, provided that the –

- licensee has complied with the obligation in the PPL; and
- shape of a relinquished block shall be approved by the NUPRC to maintain acreage of shape that is viable for award in future licensing round.

Also, after 10 years of the commencement of a PML –

- the applicable Lessee shall relinquish all parcels which do not fall within the boundary of a producing field; and
- any formation deeper than the deepest producing formation shall be relinquished, and the deep rights shall vest in the Government.

What are the conditions for transitioning from exploration to development and production?

The conditions for transitioning from exploration to development and production are as follows; pursuant to the Conversion and Renewal (Oil Prospecting Licences & Oil Mining Leases) Regulations, such application shall be made in the following manner:

- In the case of a production sharing contract, the application shall be made by the concessionaire.
- In the case of indigenous Nigerian companies on a sole risk basis for which the government has not backed in, the application shall be made by the concessionaire(s) which include assignees.
- In the case of a joint venture, the application shall be made jointly by the concessionaire(s).
- In the case of marginal fields, the application shall be made jointly by the awardee(s).

Of note, an oil prospecting licence may be converted to an oil mining lease prior to the termination or expiration of the licence. Where no such conversion occurs, the licence shall not be converted upon the termination or expiration thereof. Parties to renegotiated production sharing contracts shall not be entitled to conversion, since such parties have agreed to maintain the royalty and taxation provisions.

A conversion contract shall be concluded at a date (“Conversion Date”) which is the earlier of—

- 18 months from the effective date; and
- the expiration date of the oil mining lease or date of conversion of the oil prospecting licence to an oil mining lease.

Prior to the conversion date, the terms applicable to the oil prospecting licence or oil mining lease prior to the effective date shall continue to apply
(see Section 92 of the Petroleum Industry Act 2021)

An application for conversion shall be in a Form prescribed by the NUPRC which shall contain the following-

- The name(s), address(es), email(s), and telephone number(s) of the company(ies)making the application
- The licence or lease to which the application relates
- The type of contract relating to the license or lease where applicable; and
- The name of the operator where applicable

(see paras. 2, 3, 10, 13, 20 and 21 Conversion and Renewal (Oil Prospecting Licences & Oil Mining Leases) Regulations)

A conversion of an oil prospecting licence or oil mining lease shall require certain fiscal adjustments to be made by the holders of the oil mining leases or oil prospecting licences. NUPRC shall not sign a conversion contract unless NNPC Limited has signed off on the fact that the conversion in all respects conforms to the provisions of the Petroleum Industry Act 2021.

What are the conditions for commencement of production operations in Mozambique oil and gas sector?

Operators who wish to apply for licenses or permits for production operations must ensure they meet the criteria for application and provide all the required documents stipulated in the Petroleum Industry Act 2021. A licence or lease shall not be granted by the Minister unless the appropriate model, which may contain an obligation to comply with fiscal obligations and other provisions related to fees, rents and royalties for such model licence or model lease contract is attached to the licence or lease as a guide on the relevant fiscal obligations.
(see Section 85 of the Petroleum Industry Act 2021)

The duration of a licence or permit shall be specified by regulations made under the Petroleum Industry Act and the conditions applicable to the licence or permit may cease to have effect or be modified in accordance with terms specified in the licence or permit.

A licensee shall, prior to the commencement of petroleum production, install metering equipment conforming to the specifications prescribed on every facility from which natural gas may be flared or vented as the NUPRC may prescribe in a regulation or operate its licence or permit and related facilities, if any, according to the standard of a reasonable and prudent operator. (see Section 106 of the Petroleum Industry Act 2021)

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

Except in accordance with an appropriate licence issued by the NMDRA, a person shall not with respect to midstream petroleum liquids operations establish, construct or operate a crude oil refinery, or undertake construction or operation of any facility for the production of lubricants or petrochemicals based on petroleum products. Except in accordance with an appropriate licence issued by the NMDRA, a person shall not with respect to downstream petroleum products operations establish, construct or operate a depot for the storage of petroleum products.

Where a person engages in such activities without a licence or permit, the Nigerian NMDRA, shall-

- seal the premises where the activity is undertaken;
- dismantle and seize the facilities by which the activities were undertaken;
- confiscate equipment or materials employed by the person in such activity; or
- impose penalties as prescribed by regulations.

A person who engages in any of the activities without a Licence or Permit, commits an offence and is liable to imprisonment for a term of-

- 1 year or to a fine prescribed by regulation, in the case of an activity requiring a licence; or
- 6 months or to a fine prescribed by regulation, in the case of an activity requiring a permit.

(see Section 174 of the Petroleum Industry Act 2021)

The NMDRA, may grant Licences or permits, provided that, where it relates to the establishment of refineries the licence shall be issued by the Minister of Petroleum Resources on the recommendation of the NMDRA. It is granted where-

- it meets the technical standards required for petroleum operations based on good international petroleum industry practices;
- the location and size of the area occupied by the facilities or right of way is acceptable to the Authority;
- it meets the health, safety and environmental standards, as determined by the Authority; and
- it provides for the efficient and economic use of facilities and pipelines.
- it does not involve excessive capital or operating expenditures;
- it includes an acceptable environmental management plan
- it includes a decommissioning and abandonment plan and a decommissioning and abandonment fund
- it provides for the elimination of routine natural gas flaring
- it does not relate to midstream petroleum operations that would conflict with a licence already granted; and
- it includes – (i) a detailed programme for the recruitment and training of Nigerians in all phases of petroleum operations handled directly by the licensee or through agents and contractors of the licensee; and (ii) provision for scholarship schemes, internships, continuous professional development and other training requirements;

An applicant that is not satisfied with the reasons given by the NMDRA, for refusal of an application may apply to the Federal High Court for a judicial review.
(section 111 of the Petroleum Industry Act 2021)

What are the requirements and restrictions for the export of oil and gas produced in jurisdiction? Please specify any applicable domestic supply requirements.

One of the identified functions of the NMDRA under the Petroleum Industry Act 2021 is to issue certificates of quality and quantity to exporters of crude oil, LNG and petroleum products.
(see section 32(ii) of the Petroleum Industry Act 2021)

The duly issued Requirements & Guidelines for Import & Export Petroleum Products Permit, governing both import and export, provide that a company looking to export petroleum resources is to apply (usually on Import and Export Permit Import System Online Portal) by submitting the following documents:

- Copy of Certificate of Incorporation
- Copy of the Memorandum and Articles of Association
- Copy of the current storage facility
- Tax Identification Number
- Bank Reference Statement, amongst others; and
- The processing fee is to be paid accordingly.

NMDRA may upon approval of an application and payment of prescribed fees, grant and issue a qualified person a wholesale petroleum liquids supply licence. A wholesale petroleum liquids supply licence authorizes the supplier to sell and deliver petroleum liquids to bulk customers in Nigeria or for export.

Except in accordance with an appropriate licence issued by NMDRA, a person shall not with respect to midstream petroleum liquids operations establish, construct or operate a terminal or other facility for the export crude oil or petroleum products.

Where a person establishes, constructs or operates a terminal or other facility for the export of crude oil or petroleum products without a licence or permit, the Nigerian NMDRA, shall-

- seal the premises where the activity is undertaken;
- dismantle and seize the facilities by which the activities were undertaken;
- confiscate equipment or materials employed by the person in such activity; or
- impose penalties as prescribed by regulations

A person who engages in any of the activities without a Licence or Permit, commits an offence and is liable to imprisonment for a term of-

- 1 year or to a fine prescribed by regulation, in the case of an activity requiring a licence; or
- 6 months or to a fine prescribed by regulation, in the case of an activity requiring a permit.

(see Section 174 of the Petroleum Industry Act 2021)

All petroleum products for export from depot facilities must be sourced only from refineries and petrochemical plants. No petroleum products shall be exported from a bulk petroleum liquids storage facility without a valid certificate of quantity and quality and wholesale petroleum liquids supply licence issued by the NMDRA. No petroleum liquids export terminals shall be operated without:

- The terminal being established in accordance with the Oil Terminal Dues Act;
- Reference to the Petroleum (Transportation and Shipment) Regulations made by the Authority; and
- Appropriate and valid licences, permits and authorisations issued by the NMDRA

(see Paras. 29 and 35 MIDSTREAM AND DOWNSTREAM PETROLEUM OPERATIONS REGULATIONS, 2022)

No gas and gas products shall be exported from Nigeria without Wholesale Gas Supplier Licence. All applications for export of natural gas and natural gas products shall be in a form as prescribed in the Guidelines issued by the Authority. (see Para. 24 Midstream And Downstream Petroleum Operations Regulations, 2022)

As it relates to domestic crude oil supply obligation, whilst Section 109(1) of the Petroleum Industry Act 2021 states that the supply of crude oil and condensates for the domestic market shall be on a willing supplier and willing buyer basis, by virtue of section 113(3) of the Petroleum Industry Act 2021, the NMDRA shall in consultation with NUPRC ensure the implementation of the domestic crude oil supply obligation and domestic gas delivery obligation.

The NMDRA shall, upon request by the NUPRC, promptly supply to the NUPRC the crude oil requirements of refineries in operation. The NUPRC shall ensure that the domestic crude oil supply obligation contains the following –

- crude oil may only be sold to holders of crude oil refining licences, whose refineries are in operation;
- the supply of crude oil shall be commercially negotiated between the lessee and the crude oil refining licensee, having regard to the prevailing international market price for similar grades of crude oil; and
- holders of crude oil refining licences shall provide payment guarantees as required by the applicable lessee and payment for crude oil purchased pursuant to obligations shall be in US dollars.

Regarding production curtailment and domestic crude oil supply obligation, the NUPRC is empowered to issue regulations or guidelines on the mechanism for the imposition of a domestic crude oil supply obligation on lessees of upstream petroleum operations, where in its opinion, the domestic market results in shortages or inadequate supplies of crude oil and condensates for holders of crude oil refining licences.

Of relevance is the Production Curtailment and Domestic Crude Oil Supply Obligation Regulations 2023 which is in line with the provisions of Section 109(2) of the Petroleum Industry Act 2021. Paragraph 9(1) of the Production Curtailment and Domestic Crude Oil Supply Obligation Regulations 2023 provides that- crude oil produced by a lessee shall be subject to domestic crude oil supply obligations imposed by the NUPRC provided that the lessee shall be entitled to export any volume of crude oil more than its domestic crude oil supply obligation. Paragraph 13(1) of the Production Curtailment and Domestic Crude Oil Supply Obligation Regulations 2023 provides that NUPRC shall impose the obligation to supply by identification and selection of producing licensees and leases based on-

- The proximity and accessibility of the supply location to the refiner's location; and
- Matching of the licensees or lessees' crude specification to the grade requirements for domestic supply.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

Yes, there is a viable and competitive industry for oil and gas services in Nigeria for subcontractors or services companies.

Of note, international oil companies (IOC) have contributed to Nigeria's giant strides in the oil and gas sector leading to a competitive industry for oil and gas services in Nigeria for subcontractors or services companies. The Nigerian Oil and Gas Industry Content Development (Local Content) Act has created a very competitive domestic market in Nigeria; also, it has been instrumental in promoting the role local companies play in rendering oil and gas services in Nigeria. Nigeria is one of the world's largest producers of crude oil and a key player in Africa's oil industry, with significant natural gas reserves. Nigeria's oil and gas industry provides viable investment opportunities for businesses that provide various specialized services, and technologies to support the exploration, drilling, production, and maintenance of oil and natural gas reservoirs. Of note, the upstream subsector is regarded as being the most lucrative segment. There are quite remarkable strides in ensuring transparency in the procurement process through the Nigerian Petroleum Exchange (NipeX) online portal.

The upstream segment, is reported to have the highest share of revenue, capital expenditure, and investments. Remarkably there are opportunities in the following areas precisely:

- environmental management
- marketing
- facilities maintenance
- consultancy services
- legal services
- construction
- transportation
- insurance
- manufacturing equipment
- support services; amongst others

In promoting healthy competition and a viable and competitive industry in Nigeria for subcontractors or services companies, the Federal Competition and Consumer Protection Act 2018 empowers the Federal Competition and Consumer Protection Commission to carry out oversight functions on all forms of mergers, direct and indirect; this also applies to the subcontractors or services companies in the oil and gas industry. The Financial thresholds stipulated in the FCCPA Notice of Threshold for Merger Notifications made pursuant to Sections 3, 92 and 93 of the Federal Competition and Consumer Protection Act of 2018, require notification when the combined annual turnover of the merging companies in, into, or from Nigeria equals or exceeds one billion Naira, or when the turnover of the target company in, into, or from Nigeria equals or exceeds five hundred million Naira.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

The basic things to note for the entry requirements for oil and gas services companies are:

- Obtain the requisite Permit/License: Application for all licenses in the oil and gas sector is sought for and obtained before any person or entity can carry out any operations therein. Nigerian Upstream Petroleum Regulatory Commission issues 3 categories of permits in the Oil & Gas Industry depending on the service the company intends to provide. The categories of licenses are General, Major, and Specialized purpose.
- Register with regulatory bodies: Register with regulatory bodies such as: Corporate Affairs Commission, amongst others.
- Comply with the extant legislation

With respect to local participation, foreign ownership of Nigerian companies is regulated by the Companies and Allied Matters Act (CAMA) 2020, Nigerian Oil and Gas Industry Development Act 2010 and the Nigerian Investment Promotion Commission (NIPC) Act, which allows for foreign investment in almost all sectors of the Nigerian economy.

The Nigerian Investment Promotion Commission Act permits 100% foreign ownership of companies in all sectors except for a few sectors such as oil and gas, aviation, domestic coastal carriage, etc., which all require at least 50% local ownership and control. Section 51 makes it mandatory for operators, contractors and other entities engaged in the Nigerian Oil and Gas industry to retain the services of only Nigerian legal practitioners or a firm(s) of Nigerian legal practitioners whose office is located in any part of Nigeria as well as practitioners whose office is located in any part of Nigeria as well as submit a legal services plan (LSP) to the Board.

Of note, the Nigerian Oil and Gas Industry Content Development Act 2010 (the "Local Content Act") governs Nigerian content matters in the Nigerian oil and gas industry (the "Industry"). Under the Local Content Act, "Nigerian company" is defined as "a company formed and registered in Nigeria in accordance with the provision of Companies and Allied Matters Act with not less than 51% equity shares by Nigerians". Thus, a foreigner can acquire such exploration and production rights only through strategic partnerships with Nigerians or Nigerian companies, for instance through Joint Ventures, with adherence to local content legislation. In line with the provisions of the Nigerian Oil and Gas Industry Content Development Act, 2010 (Local Content Act), oil and gas services companies must have not less than 51% equity shares held by Nigerians.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies in Mozambique ?

Yes, there are compulsory local content requirements applicable in the operation of oil and gas services companies in Nigeria.

The Nigerian Oil and Gas Industry Content Development Act 2010 provides that 10% of total revenue from Nigerian operations be retained in a Nigerian bank account. Section

41(2) of the Local Content Act provides that- "international or multinational companies working through their Nigerian subsidiaries shall demonstrate that a minimum of 50% (fifty percent) of the equipment deployed for execution of work are owned by the Nigerian subsidiaries".

Also, Section 104 of the Local Content Act provides for the establishment of a fund known as the Nigerian Content Development Fund (the "Fund") under the management of the NCDMB. The sum of 1% (one percent) of every contract awarded to any operator, contractor, sub-contractor, alliance partner or other entity involved in any project, operations activity or transaction in the upstream sector of the industry is required to be deducted at source and paid into the Fund (the "NCD Levy").

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?

There are a number of environmental authorisations and obligations applicable to oil and gas operations in Nigeria under the following regime. Of note, the recently introduced Midstream and Downstream Environmental Remediation Fund Regulation 2023 by Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), sets out obligations for operators in the oil and gas industry in Nigeria in the establishment and financial contribution of a fund for midstream and downstream operations; the fund, aims to provide resources for the clean-up, rehabilitation or management of negative environmental impact from petroleum operations nationwide. Other notable legislation setting out environmental authorisations and obligations applicable to oil and gas operations in Nigeria are:

- The Constitution of the Federal Republic of Nigeria, 1999, as amended ("Nigerian Constitution"). Chapter Two of the Nigerian Constitution, under Section 20, contains directive principles on the environment that operators in the oil and gas sector are expected to observe and apply.
- The Environmental Impact Assessment Act, 2004. An environmental impact assessment must be conducted for any project or activity that is likely to significantly affect the environment.
- The Harmful Waste (Special Criminal Provisions) Act. By virtue of this legislation, activities relating to the purchase, sale, importation, transit, transportation, deposit or storage of harmful waste is a crime.
- The Climate Change Act, 2021. It seeks to achieve low greenhouse gas emissions through inclusive green growth and sustainable economic development.
- The National Environmental Standards and Regulation Enforcement Agency (NESREA). This imposes obligations on operators in relation to the protection of the environment.
- The Companies and Allied Matters Act, 2020 ("CAMA"): It provides environmental obligations on directors of Nigerian companies. CAMA mandates directors to consider the impact of the company's operations on the environment in the community where the company carries out its business operations.
- The Federal Competition and Consumer Protection Act, 2018 ("FCCPA"): It seeks to promote the welfare of consumers and contribute to the sustainable development of the Nigerian economy and applies to all commercial activities within, or having an effect within, Nigeria and places obligations on manufacturers, importers, distributors and suppliers of goods and services.
- The Petroleum Industry Act, 2021 ("PIA"): Section 102 of the Petroleum Industry Act 2021 provides that A licensee or lessee who engages in upstream and midstream petroleum operations shall within - (a) 1 year of the effective date; or (b) 6 months after the grant of the applicable Licence or Lease, submit for approval an environmental management plan in respect of projects which require environmental impact assessment. Also, as a condition for the grant of a licence or lease and prior to the approval of the environmental management plan, a licensee or lessee shall pay a prescribed financial contribution to an environmental remediation fund. (see Section 103 of the Petroleum Industry Act 2021). Section 239 of of the Petroleum Industry Act 2021 empowers a body known as the Host Community Development Trust to finance and execute projects for the benefit and sustainable development of host communities; operators to participate in environmental and social sustainability actions in the communities in which they operate
- The Environmental Guideline and Standards for the Petroleum Industry in Nigeria (EGASPIN). It imposes obligations on operators in relation to remediating contaminated land.

Are there any consequences of a breach of environmental obligations for the rights holder?

Yes, there are consequences for breach of environmental obligations for the rights holder. Penalties are spelt out in the respective legislation. For instance, Section 27 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act prohibits the discharge of harmful quantities of hazardous substances into air, land, water and the shorelines of Nigeria except permitted by law. Corporate companies' violators of provisions of harmful discharge of hazardous substances in Nigeria, by virtue of Section 27(3) of the NESREA Act, are liable on conviction to a fine not exceeding NGN1,000,000 and an additional fine of NGN50,000 for each day the fine subsists. Flaring or venting of natural gas is prohibited generally, a Licensee or Lessee shall pay a penalty prescribed pursuant to the Flare Gas (Prevention of Waste and Pollution) Regulations. A licensee, lessee or operator that flares or vents natural gas, except –

- in the case of an emergency;
- pursuant to an exemption granted by the Commission; or
- as an acceptable safety practice under established regulations, commits an offence under this Act and shall be liable to a fine as prescribed by the Commission in regulations under this Act.

(See Section 104 and 105 of the Petroleum Industry Act 2021)

Gas Flaring, Venting and Methane Emission (Prevention of Waste and Pollution) Regulations 2023, the Midstream Gas Flare Regulations 2023 amongst others prescribe penalties for licensees. Owners or operators of on-shore or off-shore mobile or fixed drilling rigs or work-over rigs, oil or gas wells, flow-lines, separation equipment, storage facilities, gathering lines, platforms and auxiliary non-transportation related equipment shall not discharge any well treatment wastes, deck drainage or permit overflow of retention tanks or sump which contain oil or any of the synthetic based fluids, into or upon land or navigable waters of Nigeria.
(See Regulations 8, 12, 56 of Oil Spill and Oily Waste Management Regulations (OSOWMR))

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

There are some instances where the liabilities for the rights holder for breach of environmental obligations extend to its directors and managers. The Companies and Allied Matters Act (CAMA) of 2020, administered by a body known as the Corporate Affairs Commission ("CAC"), imposes a general duty on directors of all companies duly incorporated in Nigeria to consider the impact of the company's operations on the environment in the community where the company carries out business operations. By virtue of Section 494 of the Administration of Criminal Justice Act of 2015, "offense" means an offense against an Act of the National Assembly, one (both natural and legal person) may be liable for committing an offense that is not necessarily included in the Administration of Criminal Justice Act, 2015, but created under another statute, such as the Petroleum Industry Act 2021.

Any action taken by a managing director or member of the board of directors while conducting business as usual for the company is considered to have been taken by the company as a whole, and the company is consequently subject to the same criminal and civil penalties as if it had been a natural person. For Corporate crime, Directors can be culpable under the Nigerian corporate criminal liability system based on the Administration of Criminal Justice Act of 2015, the CAMA of 2020 and relevant penal provisions of other legislation in certain circumstances.

With respect to instances where the liabilities for the rights holder for breach of environmental obligations extend to its shareholders or employees, individual violators (such as shareholders or employees) of provisions of harmful discharge of hazardous substances in Nigeria, by virtue of section 27(2) of the NESREA Act, are liable on conviction to a fine not exceeding NGN1,000,000 or imprisonment for a term not exceeding five years. Section 27(4) of the NESREA Act creates some defences for corporate officers; officers of a company can escape liability if they can prove that the said prohibition or offence was committed without their knowledge or that they exercised all due diligence to prevent the discharge. Under section 28 of the NESREA Act, the Minister of Environment may compel violators (which may include owners or operators of vessels) of the Act to undertake certain obligations as adopting certain methods for the disposal or removal of harmful substances amongst others.

Also, the Federal Government in 2006 established the National Oil Spill Detection and Response Agency (NOSDRA), a department under the Federal Ministry of Environment under the NOSDRA Act. Regulations have been made by from National Oil Spill Detection and Response Agency (NOSDRA) to improve the oil spill responses by oil companies in Nigeria. One such regulation is the Oil Spill and Oily Waste Management Regulations (OSOWMR), which was made in 2011.

In the area of compensation, the requirements of the compensation payments even by owners of oil facilities are provided in Regulation 26 of the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment (OSRCRDA) Regulations of 2011, viz-

- An owner or operator of an oil spill facility shall pay compensation to an oil Spill victim for damage caused to the victim's person, business or property.
- Compensation shall not be paid for spills caused by third-party interference or sabotage.
- An owner or operator shall internalize the cost of compensation as part of polluter-pay-principle.

Regulation 54 of Oil Spill Recovery, Clean-up, Remediation and Damage Assessment (OSRCRDA) Regulations of 2011 provides that any person who violates any provision of the Regulations shall be liable to pay the penalties provided for in the National Oil Spill Detection and Response Agency (NOSDRA) Act.

By virtue of Regulation 71 of the OSOWMR, owners or operators of facilities from which oil or oily wastes are discharged into or upon land or navigable waters of Nigeria, are liable for Owners or specific damages resulting from the discharged oil and the removal costs incurred in a manner consistent with the National Oil Spill Contingency Plan. Furthermore, Regulation 19 of the OSOWMR posits that any owner or operator of oil exploration and development facilities that fail to comply with the provisions of the regulations shall be liable to pay penalties.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Yes, there are health and safety requirements for oil and gas rights holders in Nigeria. The Nigerian Upstream Petroleum Regulatory Commission's Safety Case Guidelines for Oil and Gas Facilities set out the need for Operators/Facility Owners to have a Safety Case as a measure to statutorily obligate operators to place adequate mitigation and control measures to reduce the occurrence of accidents and hazards as low as reasonably practicable (ALARP). Safety Case is a structured argument supported by evidence that the Operators/Facility Owners present to the Regulators to show that their facility is acceptably safe for a specific application in a specific operating environment throughout its life cycle. Oil and gas operators are expected to conduct a Formal Safety Assessment (FSA) of their facilities and installations; the Formal Safety Assessment (FSA) process must include the identification of risks and appropriate measures adopted for each specific risk. The Formal Safety Assessment (FSA) Team consists of: NUPRC Representatives; Operations Personnel; Maintenance and Inspection Personnel; Instrumentation Personnel; HSE Personnel; Project Team and other subject matter experts as applicable.

Oil and oily wastes shall be collected and stored separately and barges, trucks, skips, drums, fast tanks and properly-lined retention pits shall be used in the storage of oil and oily waste for a period not exceeding sixty days.
(see Regulations 28 and 31 of Oil Spill Recovery, Clean-up, Remediation and Damage Assessment (OSRCRDA) Regulations of 2011)

Which entity is responsible for the enforcement of health and safety regulations or obligations in the gas sector?

The National Oil Spill Detection and Response Agency (NOSDRA), NUPRC, NMDPRA, National Environmental Standards and Regulations Enforcement Agency, amongst others play important roles in the enforcement of health and safety regulations.

Are there any consequences of a breach of these requirements for the rights holder?

Yes, there are consequences for breach of health and safety regulations or obligations for the rights holder. The NUPRC or NMDPRA, as the case may be, may assess a penalty in the prescribed amount against any person for prescribed contraventions of the Petroleum Industry Act 2021, regulations or an order made pursuant to this Act. Prior to assessing a penalty, the Commission or Authority, as the case may be, shall provide notice to the person –

- setting out the facts and circumstances that make the person liable to a penalty;
- specifying the amount of the penalty that is considered appropriate in the circumstances; and
- informing the person of the person's right to make representations to the Authority or Commission, as the case may be

(Section 231 of the Petroleum Industry Act 2021)

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

Since there is a statutory obligation for operators to place adequate mitigation and control measures to reduce the occurrence of accidents and hazards as low as reasonably practicable, there are some instances where the liabilities of the rights holder for breach of health and safety obligations extend to its Directors, as it concerns Corporate crime, wherein Directors can be culpable under the Nigerian corporate criminal liability system based on the Administration of Criminal Justice Act of 2015 and relevant penal provisions of other legislation in certain circumstances. On the other hand, the liability of shareholders or employees for breach of health and safety obligations by rights holders is very limited to instances such as where conspiracy is established with erring Directors.

DECOMMISSIONING

What are the decommissioning and abandonment requirements and obligations for oil and gas rights holders in your jurisdiction?

There are the decommissioning and abandonment requirements and obligations for oil and gas rights holders. Section 232 and 233 of the Petroleum Industry Act 2021 provides the decommissioning and abandonment requirements and obligations for oil and gas rights holders.

Of note, the recently introduced Midstream and Downstream Decommissioning and Abandonment Regulation 2023 by NMDPRA, sets out the requirements and procedures for the decommissioning and abandonment of petroleum facilities in the midstream and downstream sector.

All new licensees and lessees shall submit a decommissioning and abandonment plan to the NUPRC and pay the appropriate fees in accordance with the Midstream and Downstream Decommissioning and Abandonment Regulation 2023. The plan must comply with good international petroleum industry practices. Every Upstream petroleum operation in Nigeria shall be conducted subject to a decommissioning and abandonment plan approved by the NUPRC.

Each lessee and licensee shall set up and maintain a decommissioning and abandonment fund, which shall be held by a financial institution that is not an affiliate of the lessee or licensee. Installations and structures shall be completely removed and the environment restored to its original condition, except for buried transportation pipelines and gathering lines
Decommissioning and abandonment shall not take place without the written approval of the NUPRC or NMDPRA, as the case may be; there is an obligation as well for the lessee or licensee, to prior to any decommissioning and abandonment, submit to NUPRC or NMDPRA, as the case may be, a programme setting out-

(a) estimate of the cost of the proposed measures;
(b) details of measures proposed to be taken in connection with the shutdown of operations and decommissioning and abandonment of disused installations, structures or

other assets used in petroleum operations as the case may be;
(c) clear descriptions of the methods to be employed to undertake the work programme, which shall be in line with good international petroleum industry practices and environmental development;
(d) steps to be taken to ensure maintenance and safeguard, where any installation, structure or pipeline remains disused and in position or is to be partly removed with respect to deep and ultra-deepwater environments and where the installation, structure or pipeline is partly removed, the licensee or lessee shall remain liable for any residual liability arising from the installation, structure or pipeline not removed; and
(e) assessment of the environmental and social impact of the decommissioning and abandonment measures

Are there any particular events or timelines that trigger decommissioning obligations?

Yes, there are particular events or timelines that trigger decommissioning obligations. Two notable instances are:
- Firstly, the NUPRC or NMDPRA, as the case may be, shall by written notice, require a lessee, licensee or permit holder to commence the decommissioning and abandonment of a well, installation, structure, utility and pipeline, where such decommissioning and abandonment is required under good international petroleum industry practices or the guidelines.
- A licensee or lessee may by written notice inform the NUPRC or NMDPRA, as the case may be, of its intention to decommission or abandon.

Regulation 5(4) of the Midstream and Downstream Decommissioning and Abandonment Regulation 2023 provides that an abandonment or decommissioning activity shall be conducted as follows:
- Where the abandonment relates to a well after drilling, on the grounds that the well is dry or uneconomic or for any other reason, a licensee or lessee may apply to the Commission to permanently plug and abandon the well; and
- The application shall be made as soon as the well drilling results are known and provide the well summary information, the details of the downhole and mechanical condition

A licensee or lessee shall
- inform the NUPRC NMDPRA, as the case may be, of the establishment of its decommissioning and abandonment fund not more than 3 months from the date of commencement of production for upstream petroleum operations or the commissioning of the facilities for midstream petroleum operations; and
- furnish the NUPRC or NMDPRA, as the case may be, on an annual basis with statements of accounts with respect to its decommissioning and abandonment fund.

A decommissioning and abandonment fund shall be funded by the applicable licensee or lessee based on the yearly amount established and as provided in the regulation. The decommissioning and abandonment plan shall establish the yearly amount to be contributed to the respective decommissioning and abandonment fund and the yearly amount shall be based on a reasonable estimate by the licensee or lessee of the applicable decommissioning and abandonment costs, projected forward on a nominal basis and divided by the estimated life of the facilities and the reasonable cost estimate shall be approved by the NUPRC or NMDPRA, as the case may be. The estimated life of the said facilities shall be based on the following –

- estimated life of the Field, in case of facilities used for upstream petroleum operations, and
- period of time for which the safe operations of the facilities were designed, in case of facilities used for midstream petroleum operations.

The estimated yearly contribution shall be reviewed every 10 years following the first submission.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

Under the Petroleum Industry Act 2021, Petroleum Profit Tax (PPT) will be replaced with Companies Income Tax (CIT) and Hydrocarbon Tax (HT). Whilst current Oil Mining Licence and Oil Prospecting Licence holders will continue to be taxed in line with the Petroleum Profits Tax Act (PPTA) unless a conversion contract is executed in line with the provisions of the Petroleum Industry Act 2021. Thus, both the Petroleum Industry Act 2021 and the Petroleum Profits Tax Act are relevant.

The Petroleum Profits Tax rates vary as follows:
- 50% for petroleum operations under production sharing contracts (PSC) with the Nigerian National Petroleum Corporation Ltd (NNPCL).
- 65.75% for non-PSC operations, including joint ventures (JVs), in the first five years during which the company has not fully amortised all pre-production capitalized expenditure.
- 85% for non-PSC operations after the first five years.
- 30% for upstream gas profits.

The Petroleum Industry Act 2021, provides that holders of a Petroleum Prospecting Licence and Petroleum Mining Lease will be subject to both Companies Income Tax at 30%, and Hydrocarbon Tax (HCT). Withholding tax on dividends at 10% and Tertiary Education Tax (TET) of 2% of assessable profits will still be applicable however unlike under the PPTA, Tertiary Education Tax will not be tax deductible.

Hydrocarbon Tax rates are as follows:
- 30% for converted/renewed onshore and shallow offshore PML.
- 15% for onshore and shallow onshore PPL and Marginal Fields.
- Deep offshore is exempt from HCT.

(see Chapter 4 of Petroleum Industry Act 2021)

Thus, the chargeable tax for any accounting period of a company in the oil and gas sector in Nigeria is a percentage of the chargeable profit for the period aggregated and it is- (a) 30% of the profit from crude oil for PML with respect to onshore and shallow water areas; and (b) 15% of profit from crude oil for onshore and shallow water and for PPL
(see Section 267 of Petroleum Industry Act 2021)

The Petroleum Industry Act 2021 replaces the Investment Tax Allowance (ITA) and Investment Tax Credit (ITC) with a Production allowance per crude oil production which consists of:
- for new acreages- the lower of 20% of the fiscal oil price and USD 8 per barrel volume
- for converted acreages- the lower of 20% of the fiscal oil price and USD 2.50 per barrel for production of up to 500million barrels and USD 4 for post 500million barrels produced.

Are there any tax Incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

Yes, there are tax incentives and exemptions available in the oil and gas sector. Pioneer status and gas utilisation are some of the incentives available in midstream operations. With the enactment of the Petroleum Industry Act 2021 there are reduced corporate tax rates, royalties and tax incentives for midstream operations, downstream gas operations and gas infrastructures. Also, there are tax incentives for midstream petroleum operations, downstream gas and large-scale industries including ten (10) years tax holiday for investment in the gas pipeline. Companies engaged in midstream petroleum operations, downstream gas operations and large-scale gas utilization industries enjoy the gas utilization incentives set out under Section 39 of the Companies Income Tax Act which includes an initial tax-free period of 3 years, to be renewed for 2 years subject to satisfactory performance of the business. In addition to the above, companies investing in gas pipeline enjoy an added benefit tax-free period of 5 years upon the expiry of the gas utilization incentives. (See section 302 Petroleum Industry Act 2021)

Of note, current Oil Prospecting Licence or Oil Mining Licence holders have the option to convert their subsisting interests to a PPL or PML through a Conversion Contract to enjoy fiscal incentives. The Petroleum Industry Act 2021 introduces the condition that parties to a group restructuring have to be part of a recognized group for at least 3 years prior to the date of reorganization to be eligible for certain benefits. The approval of the Federal Inland Revenue Service (FIRS) is also needed before any restructuring is done. (section 271 Petroleum Industry Act 2021)

Section 256 Petroleum Industry Act 2021 provides that the funds of the host communities development trust created under the Petroleum Industry Act 2021 shall be exempted from taxation.

These incentives and exemptions are granted in deserving circumstances.

What is the procedure for obtaining any applicable incentives and exemptions?

An application is to be made to the NUPRC or NMDPRA) to obtain the applicable incentives.

The NUPRC or NMDPRA grant the exemptions in deserving circumstances.

STABILISATION RIGHTS

Are there any forms of stabilization rights granted to investors in the oil and gas sector?

Yes, there are stabilisation rights granted to investors in the oil and gas sector. By way of background, renegotiation and stabilisation clauses offer balancing of the contract terms giving room for parties to renegotiate the terms of their contract to make bearable any change in the economic, political and social climate or resultant hardship that subsequently arises to change circumstances after executing the contract. These clauses allow for modification of the agreements rather than terminating the contractual relationships. The government's participation in petroleum exploration leads to contractual agreements with International Oil Companies to safeguard the project against environmental and social legislation; the Nigerian government sometimes agree to incorporate stabilisation clauses in the Production Sharing Contracts such as the economic equilibrium clause which requires compensation of the contracting International Oil Companies where there is a change in law that materially adversely affects their investments.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

Where the NUPRC decides to grant a PPL or PML under contractual terms, the NUPRC shall prepare the related model contract, which stipulates the fiscal and other provisions related to such contract, to be attached to such licence or lease. The contracts shall be administered by the NUPRC and the Government revenues related to the contracts shall be paid to the Federation Account and verified by the NUPRC. (see paragraph 14, Seventh Schedule of Petroleum Industry Act 2021).

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

Yes, the government (and its agencies) comply with the terms of stabilisation agreements.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

Yes, there are common issues that arise for investors in respect of the scope and effect of stabilisation agreements. All international companies who have executed Production Sharing Contracts that contain stabilisation causes are required to review the terms and conditions of their individual PSCs, in order to determine the amendments that will be made to the PSC in order to align same with the new fiscal terms since by virtue of Section 305 Petroleum Industry Act 2021 fiscal stabilisation clauses contained in any Production Sharing Contract or other contract entered into after 16th August, 2021 being the commencement of the Petroleum Industry Act 2021 shall not be applicable to certain fiscal provisions, regardless of whether these changes affect the contractor favorably or unfavorably, if changes are being made in a manner that is not discriminatory to the petroleum industry or the contractor, with respect to –

- generally applicable taxes, such as withholding taxes, companies income tax, tertiary education tax and VAT;
- levies, taxes or payments to comply with modern principles in respect of environment, labour laws, health and safety; and
- new taxes, levies or duties to implement Nigeria's commitments with respect to climate change under the United Nations Framework Convention on Climate Change and other related international agreements.

DISPUTES

Are there any statutorily prescribed procedures for the resolution of disputes?

Yes, there are statutorily prescribed procedures for the resolution of disputes in some circumstances.

Section 251(1) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) provides that- "the federal high court shall have jurisdiction to the exclusion of other courts in civil cases and matters relating to mines and minerals (including oil fields, oil mining, geographical surveys and natural gas)."

Remarkably, there are several legislations that encourage resort to arbitration for the settlement of disputes in the Oil and Gas industry in Nigeria. Section 26(3) of the Nigerian Investment Promotion Act 2004 encourages the settlement of disputes in the field of oil and gas in Nigeria by arbitration.

Section 16 of the Petroleum Host Community (Commission) Regulations provides that grievances should be referred to the National Oil and Gas Excellence Centre (NOGEC), being the Alternative Dispute Resolution Centre (ADRC).

Also, Section 76(1)(f) of the Petroleum Industry Act 2021 provides that- "The model licence or model lease for each bid round shall reflect the conditions of the licensing round guidelines for the bid round and shall in all circumstances include the following clauses: rules for the resolution of disputes including arbitration, mediation, conciliation, or expert determination"

For any dispute which may arise as to whether a delay by a licensee, who is statutorily required to increase so far as possible with his existing facilities, the supply of petroleum or petroleum products, or both, for the Federal Government to the extent required by the Minister of Petroleum Resources, is due to causes beyond the control of the licensee or lessee shall be settled by agreement between the Minister of Petroleum Resources and the licensee or lessee or, in default of agreement, by arbitration. (see Para. 4 of the First Schedule of Petroleum Industry Act 2021)

Dispute as to the price of petroleum products taken by the Minister at port of delivery pursuant to his preemptive right is to be settled by agreement between the Minister and the licensee/lessee or in default of agreement by arbitration. (Para. 5 (b) of the First Schedule to the PIA of the First Schedule of Petroleum Industry Act 2021)

Another example of a statutorily prescribed procedure for the resolution of disputes can be found in Para. 4 of the First Schedule of Petroleum Industry Act 2021 which provides that for any dispute which may arise as to whether a delay by a licensee, who is statutorily required to increase so far as possible with his existing facilities, the supply of petroleum or petroleum products, or both, for the Federal Government to the extent required by the Minister of Petroleum Resources, is due to causes beyond the control of the licensee or lessee shall be settled by agreement between the Minister of Petroleum Resources and the licensee or lessee or, in default of agreement, by arbitration.

Section 120 (1) (j) of Petroleum Industry Act 2021 provides that- "Notwithstanding the provisions of Chapter 2 of this Act related to midstream and downstream petroleum operations, a licence or permit may be revoked where the holder fails to abide by any expert determination, arbitration award, or judgment arising from the dispute resolution provisions set forth in a licence or this Act"

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

There are some specific procedures for the resolution of disputes under certain circumstances; as set out above.

In Nigeria, arbitration as a method of dispute resolution in resolving oil and gas disputes is prevalent; also, there are other forms of alternative dispute resolution such as mediation, before litigation- being the last resort.

REPUBLIC OF GUINEA
THIAM & ASSOCIÉS

FIRM INFORMATION

Website address : **https://www.thiam-associes.com/**
Languages spoken : **English**
Telephone : Guinea (+224 623 92 66 92 / +224 626 26 26 95)
France (+33 7 55 45 76 44)
Address : Kipé - Metal Guinea, next to Sino Guinean Hospital, Municipality of Ratoma, BP 781 Conakry (Republic of Guinea)
Email : contact@thiam-associes.com

REPUBLIC OF GUINEA | THIAM & ASSOCIÉS

RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

In the Republic of Guinea, the oil and gas sectors are governed primarily by Law L/2014/034/AN of 23 December 2014 (Oil Code).

Other laws that govern the sector include:

- Law L/2019/0034/AN of 4 July 2019 (the Environmental Code)
- Law L/2022/0010/CNT of 22 September 2022 (the Local Content)
- Law L/2015/007/1 of 5 May 2015 (the Customs Code)
- Law L/2014/072/CNT of 10 January 2014 (the Labor Code)
- Law L/2017/ 060/AN of 12 December 2017 (the Forestry Code)
- Law L/2015/020/AN of 13 August 2015 (the Construction and Housing Code)
- Ordinance O/92/019 of 30 March 1992 (the Land and Domain Code)
- Law L/2021/032/AN (General Tax Code)
- Law L/2019/035/AN of 4 July 2019 (the Civil Code)

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

The main regulatory bodies that administer and enforce the laws and regulations governing the hydrocarbons sector in the Republic of Guinea are:

- Ministry in charge of hydrocarbons;
- National oil company (Société Nationale des Pétroles – SONAP);
- The oil administration;
- Guinean office for oil research and promotion (Office Guinéen de Recherche et de Promotion Pétrolière – OGRPP) attached to the Ministry of Mines and Geology;
- National directorate of hydrocarbons (Direction Nationale des Hydrocarbures – DNH); and
- National directorate of oil products and derivatives (Direction Nationale des Produits Pétroliers et Dérivés – DNPPD) at the Ministry of Commerce and Industry.

What are their powers and functions?

a. The Minister in charge of hydrocarbons:

The Minister in charge of hydrocarbons designs, draws up, and implements the Government's policy on hydrocarbons, in accordance with Article 8 of the Oil Code, which provides that:

"He is particularly responsible for:

a) defining national policy for the development of Hydrocarbon resources.
b) supervising the Oil Administration.
c) submitting, on the proposal of Oil Administration, draft decrees implementing this Code to the President of the Republic for promulgation Oil Administration;
d) taking decisions and issue instructions relating to procedures for the allocation of Oil Rights in accordance with the provisions of this Code.
e) signing, jointly with the Minister of Finances, Oil Agreements on behalf of the country;
f) issue the approvals and authorizations for which he is responsible under this Code and the specific provisions of the Oil Agreements;
g) ensuring that approvals and authorizations required from government ministries and departments other than those mentioned in this Chapter about Oil Operations are issued with all due diligence so as not to delay Oil Operations;
h) promoting good governance and transparency in the Hydrocarbons sector; and
i) more generally, undertaking all actions expressly entrusted to him by this Code or which are related to the above functions".

b. Oil administration:

Under Article 9 of the Oil Code, the oil administration is responsible for the design, development, implementation, monitoring, and evaluation of the Government's hydrocarbons policy, under the direction and control of the Minister in charge of hydrocarbons.

The oil administration is also responsible for:

a) promoting the development of hydrocarbon exploration and operating activities;
b) managing invitations to tender and direct negotiations relating to oil agreements, and advising the Minister in charge of hydrocarbons, in accordance with Articles I9 and 20 of the Oil Code;
c) examining applications for reconnaissance and transport authorizations;
d) examining applications for renewal of authorizations submitted by holders of oil rights, and advising the Minister in charge of Hydrocarbons on their approval, granting, or rejection;
e) examining work programs, development, production, or site rehabilitation plans, as well as the relevant budgets, submitted to the Minister in charge of Hydrocarbons by oil rights holders, and proposing to the Minister in charge of Hydrocarbons the approval, modification, or rejection of these programs, plans, and budgets;
f) managing oil rights by ensuring compliance with the provisions of the Oil Code, its implementing texts, and the contractual provisions;
g) creating and maintain an oil administration website

containing all information and documents required to be published by the Oil Code;

h) representing the State in the coordination committees stipulated by oil agreements;

i) monitoring oil operations and conducting all necessary inspections, investigations, and controls in this regard;

j) in coordination with the administrative services responsible for the collection of state revenues outlined by this Code and oil rights, ensuring that all relevant revenues are deposited by the accountable parties directly into the single treasury account opened at the Central Bank of Guinea, except as provided for in Oil Code;

k) overseeing the management of data concerning oil operations and the registers pertaining to oil rights;

l) establishing and maintaining an official website for the oil administration and the registers pertaining to oil rights; and

m) performing all other functions incumbent upon the oil administration under the Oil Code.

c. The national company:

Under Article 10 of the Oil Code, where there is commercial discovery under an oil agreement, a national oil company, created under Guinean law, may be established by a decree of the President of the Republic, on the joint proposal of the Minister in charge of hydrocarbons and the Minister in charge of finance to manage the State's commercial interests under the oil agreement.

The national company thus created will be responsible for:

- lifting and marketing on behalf of the State the share of hydrocarbon production belonging to it under the oil agreement;
- managing the State's share of the contractor's rights and obligations under the oil agreements if the State exercises the option to participate as provided under Articles 46 to 48 of the Oil Code; and
- carrying out all geological and geophysical work on behalf of the State and, more generally, provide the oil administration with any technical assistance it may require.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

Oil and gas resources belong to the State as provided in Article 4 of the Oil Code, which states that:

"The deposits or natural accumulations of Hydrocarbons existing in the subsoil of the National Territory are the property of the State and are not susceptible to any form of private appropriation".

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

Under the Oil Code, the State grants investors in the hydrocarbon sector the following rights:

a) acknowledgement authorizations;

The authorization confers on a holder, the non-exclusive right to carry out all preliminary Hydrocarbon exploration work, including, but not limited to, geological, geophysical, and geochemical methods, but excluding drilling to a depth of more than three hundred (300) metres within a defined perimeter.

b oil and gas contracts (operating license); and

Any company may acquire Oil Rights if they meet the qualifications criteria set out by the oil administration. Each applicant is required to provide supporting documentation covering the following qualifications:

a) technical;
b) financial;
c) quality-health-safety-environment qualification; and
d) legal capacity - the organization of the company and the identity of its directors, managers, and shareholders.

c) transport authorizations, together the "Oil Rights".

The oil agreement grants the contractor, during its term and under the conditions defined therein, the right to construct and operate pipelines within the national territory enabling it to transport hydrocarbons to points of storage, processing, offtake, or bulk consumption.

Please provide an overview of the procedure for obtaining such exploration and production rights.

Under the Oil Code, exploration or prospecting authorization is granted to a company by decree of the Minister in charge of hydrocarbons, at the proposal of the oil administration.

Operating rights are awarded through an international call for tenders or mutual agreement between the investor and the State, represented by the Ministry in charge of hydrocarbons in the Republic of Guinea.

Are there any fees and charges applicable to obtaining these rights?

There are currently no prescribed fees. The Oil Code provides for the prescription of the fees by regulations, however, we no regulations on fees have been passed yet.

What is the duration of the exploration and production rights?

Per Article 24 of the Oil Code, the period of exploration may not exceed eight (8) years from the date of entry into force of the oil agreement.

Operating authorization is granted for an initial term not to exceed twenty-five (25) years for crude oil fields in accordance with Article 32 of the Oil Code.

Are the exploration and production rights renewable? What are the renewal processes?

Yes, per Article 24 of the Oil Code, the exploration period may be renewed twice after the initial exploration phase expires. Each renewal is granted at the request of the contractor on condition that it has fulfilled its contractual obligations for the previous phase. However, the duration of the initial phase and the two (2) possible renewal phases shall not exceed eight (8) years, corresponding to the overall duration of the exploration period.
In addition to these renewals, the exploration period may be extended only once for six (6) months. This extension is exceptional, being granted solely for the purpose of allowing the co-contractor to complete an ongoing drilling operation under the conditions specified in the oil agreement.

Under Article 33 of the Oil Code, renewals of the exploration period are granted by an order of the Minister in charge of hydrocarbons, on the proposal of the oil administration in accordance with the terms and conditions set out in the oil agreement.

Furthermore, pursuant Article 32 of the Oil Code, the oil agreement may extend the duration of the operating authorization by ten (10) years upon motivated request from the co-contractor if, at the end of the initial operating period, commercial operating proves feasible.

Under Article 33 of the Oil Code, extension of the duration of the operating authorization is granted by decree of the President of the Republic, on the proposal of the oil administration in accordance with the terms and conditions set out in the oil agreement.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

Each oil agreement contains a clause granting the State an option to participate, either directly or through a National Company, in the rights and obligations of the Contractor in any operating perimeter.

The Petroleum Contract sets out the terms and conditions for exercising this option and specifies the maximum percentage of interest that the State may acquire, which shall be at least ten percent (10%).

Although the State shares in the hydrocarbons produced, the State assumes no financing obligations or financing guarantees and is in no way liable to third parties in connection with the performance of the oil agreement. The contractor is responsible, at its own expense and risk, for mobilizing the technical and financial resources and equipment required to carry out oil operations. A portion of production is allocated to the recovery of oil and gas costs incurred by the contractor, and the balance is shared between the State and the contractor according to the distribution principles specified in the oil agreement.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

Except for the option granted to the State under Article 46 of the Oil Code to acquire, either directly or through a national oil company, at least ten percent (10%) of the rights and obligations of the contractor in any operating perimeter, there is no other specific local participation requirement regarding the acquisition of exploration and production rights in the Republic of Guinea.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

We are not aware of any special legal restrictions applicable to foreign persons seeking to acquire exploration and production rights in the Republic of Guinea.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

Yes, under Article 54 of the Oil Code, contractors and their subcontractors must give preference to companies owned or controlled by Guineans ("Local Companies") for construction, supply, procurement, and other services contracts, under equivalent conditions of quality, price, quantity, lead times and payment terms.

To this end, contractors must organize their purchasing policies in such a way as to give the Local Companies real opportunities to bid for contracts.

Within six (6) months of the start of oil operations and when submitting a development plan, the contractor must provide the oil administration with a support plan for Local Companies for approval by the Minister in charge of hydrocarbons. The plan must:

a) identify opportunities for Local Companies to provide value-added goods in Guinea and services provided by Guineans in support of oil operations;
b) identify the main measures likely to develop the capacity of Local Companies to provide services to the hydrocarbons sector;
c) provide a draft local purchasing plan in accordance with the above provisions, including specific steps for increasing the percentage of local goods and services and granting certain privileges to Local Companies (without, however, making exceptions to the principles of equivalence – of

quality, price, quantity, lead times and payment terms – referred to above); and

d) include in the plan reasonable objectives, procedures for regular verification and reporting on the contractor's performance in relation to the objectives, as well as reasonable economic penalties for failure to achieve these objectives.

The contractor shall submit an annual report to the Minister in charge of hydrocarbons on the progress made towards achieving the objectives of the plan referred to above, as well as activities to create or strengthen Guinean capacities. This report, a copy of which will be filed with the Ministry in charge of Trade, Industry and Small and Medium Enterprises will be published on the oil administration's website.

In addition, contractors and their subcontractors must, at all phases of oil operations, give priority to employing Guineans with the required skills at junior and management levels, having regard to the nature and extent of the personnel requirements for the conduct of operations during each phase. For all unskilled jobs, contractors and their subcontractors must give priority to offering employment to residents of communities local to or adjacent to the oil operations.

As part of the development plan and every five (5) years thereafter during the operation period, contractors shall submit to the oil administration and implement a training plan for Guinean employees enabling them to acquire the necessary expertise to occupy certain positions, including accounting, legal and management positions, and to ensure a gradual reduction in foreign personnel.

Each contractor will be required to submit an annual report to the oil administration and the Ministry in charge of employment on its use of Guinean employees, detailing the contractor's progress in employing local labor and its activities to create or strengthen the capacity of Guinean employees. This report will be published on the oil administration website.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

a- Any requirements, consents, or restrictions for the transfer or assignment of exploration and production rights?

In accordance with Article 107 of the Oil Code, exploration and production rights are assignable and transferable, in whole or in part, subject to the prior approval of the Minister in charge of hydrocarbons, under the conditions set out in the Oil Code and its implementing order (note that that most of these implementing order have not yet been adopted).
As an exception to the foregoing, the assignments of interests by a company constituting the contractor to an affiliated company, and the assignments of interests between companies constituting the contractor, are submitted to the oil administration for information purposes, as per the terms of the oil agreement.

b- What fees, taxes, or other charges apply to these transfers?

Article 521-33 of the General Tax Code requires the registration fee on any deed involving the assignment or transfer of ownership or use of Oil Rights (acknowledgement authorization, oil agreement, transport authorization) referred to in Article 5 of the Oil Code".

Article 534 of the same Code also provides that:

"Proportional or progressive duty is established on transfers of ownership, usufruct or enjoyment of movable or immovable property, either inter vivo or by death, as well as on divisions of movable or immovable property, contracts subject to the Public Procurement Code and rights encumbering movable and immovable property (pledges and mortgages)".

Thus, the registration fee for the sale of shares (other than in companies with most real estate assets) is 2% of the value of the shares.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

Under the Oil Code, any change of control of entities operating in the oil sector must receive the prior approval of the oil administration.

The restrictions or requirements concerning the change of control of entities in the oil sector relate more to the restrictions and requirements concerning the assignment or transfer of production or operating rights. However, the assignment or transfer of production or operating rights may extend to the transfer of shares or units, provided that the assignment or transfer results in control of the company holding the rights.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

Given that the transfer or assignment of exploration and production or operating rights or the change of control constitutes, in our opinion, the intention of an entity to acquire or obtain the right to produce or to have control of an entity holding such Oil Rights, such an entity would be obliged to meet the qualification guidelines for any company applying for Oil Right. These qualifications include:

a) technical;
b) financial;
c) quality-health-safety-environment; and
d) legal capacity - the organization of the company and the identity of its directors, managers, and shareholders.

Governmental consent/approval for the transfer or assignment of production or operating rights interests or change of control in the Republic of Guinea will thus be granted if the qualifications guidelines above are fulfilled.

Are rights holders allowed to create security over their exploration and production rights?

The holders of oil and gas exploration or prospecting rights are not authorized to create a security interest over their exploration or prospecting rights, as the Oil Code provides that these rights are neither assignable, transferable nor leasable and do not confer on their holder any right or privilege in the context of obtaining an oil and gas contracts.

On the other hand, production rights may be collateralized, since they are assignable, transferable, and leasable. However, such security can only be concluded prior to the approval by the Minister in charge of hydrocarbons.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations?

Under Article 24 of the Oil Code, the exploration period comprises three (3) phases, consisting of an initial phase, followed by two (2) possible renewal phases. The duration of exploration or prospecting operations may not exceed eight (8) years, in principle, from the date of entry into force of the oil agreement.

The Oil Code does not specify the duration of each phase. It is the oil agreement that must stipulate the initial term (which leads us to believe that it is negotiated subject to appropriate justification, and the contractor's compliance with its contractual obligations during the preceding phase). It is at the end of this initial term that the contracting authority will decide whether to grant a renewal.

Are there any prescribed minimum work and expenditure obligations for exploration operations?

The oil agreement must specify the minimum program of work that the contractor must carry out for each phase of the exploration period. Furthermore, under Article 28 of the Oil Code, the contractor is required to submit an annual work program and corresponding budget to the oil administration for approval, in accordance with the procedures specified in the oil agreement.

In addition, under Article 25 of the Oil Code, the contractor must submit a bank guarantee from an internationally reputed bank covering the minimum work commitments to be carried out by the contractor during each phase of the exploration period.

Are there any compulsory relinquishment requirements?

In accordance with article 26 of the Oil Code, the contractual perimeter is reduced by thirty percent (30%) at the end of the first phase of the exploration period and by 30% of the initial area at the end of the second phase of the exploration period.

At the end of the exploration period, the contractor must return the entire contractual perimeter, excluding the evaluation and exploitation perimeter(s) in force at that time, if any.

What are the conditions for transitioning from exploration to development and production?

In accordance with the provisions of Articles 12, 29, 30, and 32 of the Oil Code, to transition from exploration to development or production, the contractor must submit the results of its exploration work to the oil administration, notify the oil administration of the hydrocarbon discovery, and submit a bid or negotiate directly with the State for the award of an oil agreement.

What are the conditions for commencement of production operations?

To start production or operating, the operator must provide a proposal for the delimitation of the operating perimeter, accompanied by a draft development plan an estimate of development costs, and a commitment to carry out development work on the commercial deposit with all possible diligence, in accordance with the development plan and any amendments thereto provided for by the Oil Code.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

The Oil Code does not expressly provide for requirements and restrictions relating to the processing and refining of oil and gas in the Republic of Guinea. We are, however, of the view that the qualification requirements for acquiring oil rights will likely apply.

What are the requirements and restrictions for the export

of oil and gas produced in your jurisdiction? Please specify any applicable domestic supply requirements.

Article 41 of the Oil Code states that:

"At the request of the Minister in charge of Hydrocarbons and in accordance with the terms and conditions specified in the Oil Agreement, the Contractor must satisfy in priority, out of its share, the Hydrocarbons required to cover national energy and industrial needs insofar as the State's and the national company's shares are insufficient to meet these needs".

We understand from this provision that the law requires the contractor, before any export, to first satisfy national needs from its share of hydrocarbons, should the State's share be insufficient to meet these national needs.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

The Republic of Guinea does not currently have an upstream oil and gas services sector, because there has been no commercial discovery of oil and gas.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

To our knowledge, there is no requirement to have a local partner of Guinean nationality for oil and gas services.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies?

In accordance with Article 54 of the Oil Code, contractors, and their subcontractors must give preference to local companies for construction, supply, procurement, and miscellaneous services contracts, subject to equivalent quality, price, quantity, lead times and payment terms.

Law L / 2022/010/CNT on Local Content ("Local Content") which supplements the Oil Code provides in article 14, that operators or service companies are required to employ Guinean personnel, in accordance with the following minimum quota:

A. Executive management:

- thirty percent (30%) of the personnel, including the human resources manager, from the start of operations;
- forty percent (40%) of the personnel, from the fourth (4th) year of operation;
- fifty percent (50%) of the personnel, from the seventh (7th) year of operation.

B. Supervisory management:

- twenty-five percent (25%) of the personnel, from the start of operations;
- forty percent (40%) of the personnel, from the fourth (4th) year of operation;
- seventy percent (70%) of the personnel, from the seventh (7th) year of operation.

C. Skilled workers:

- fifty percent (50%) of the personnel, from the start of operations;
- seventy percent (70%) of the personnel, from the fourth (4th) year of operation;
- eighty-five percent (85%) of the personnel, from the seventh (7th) year of operation.

D. Unskilled workers:

- One hundred percent (100%) of the personnel, from the start of operations.

Regardless the category concerned, in the event that it is duly established by the operator, through documents or detailed reports sent to the ARCCL (Guinean regulatory authority for local content), that the above quotas cannot be met at these various stages, due to a lack of expertise or availability, the operator must establish a detailed training program and a schedule for the progressive replacement of foreign personnel by nationals

This program must be communicated to the ARCCL for approval.

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?

Under Article 59 of the Oil Code, contractors must carry out oil operations with due care to prevent damage to the environment. To this end, they are required to:

a) comply with the standards established by the Environmental Code, its implementing texts, and international conventions on the prevention and repression of marine pollution, and, in any event, with the standards required by the best practices used in the international oil industry, in order to prevent any pollution of the environment;

b) design, implement, and keep up to date with technological developments management systems designed to ensure such compliance;

c) implement measures in line with those practiced in the international oil industry to deal with and minimize the effects of any pollution; and

d) ensure that its subcontractors manage environmental risks in accordance with the above-mentioned standards and systems.

Notwithstanding the above obligations, and in accordance with the Environment Code, oil operations are subject to environmental and social impact assessments ("ESIAs") and environmental and social management plans ("ESMPs"), which are drawn up, approved, and implemented under the conditions set out below, as supplemented by the implementing texts of the Environment Code, as well as the guides and directives published by the departments of the Ministry in charge of the environment:

a) the following are subject to the obligation to implement an ESIA and an ESMP: (i) research work programs involving drilling operations or seismic line acquisition operations; (ii) development plans and any revisions thereof, and (iii) site rehabilitation plans.

b) the studies and plans referred to in point a) (i) of this Article shall be drawn up and approved at the beginning of each phase of the exploration period of an oil agreement providing for a work program comprising one or more of the operations in question.
Those referred to in points a) (ii) and (iii) are drawn up and approved as part of the preparation and approval of the plans (and their revisions) in question, as provided for in the oil agreements;

c) responsibility for drawing up the ESIA and ESMP lies with the contractor. For blocks located on land, and for any project to build storage, processing, or transport infrastructure on land, regardless of the location of the block concerned, the contractor must carry out a process of informing and consulting the populations likely to be affected by the oil operations in a manner reasonably adapted to the potential impacts of such operations and with the assistance of agents of the Ministry in charge of the environment.

d) in connection with each project referred to in paragraph a) of this Article, the contractor shall prepare and submit to the Minister in charge of the environment, through the oil administration, a project notice describing the work program, the area concerned, and any major environmental and social issues, as well as the terms of reference of an ESIA for review and approval by the competent departments of the Ministry in charge of the environment within eighteen (18) working days of the submission of said notice.

If reservations are expressed by the relevant departments within the period in question, the review and validation process shall in no case exceed twelve (12) working days from resubmission.

a) Approved ESIAs and ESMPs shall be published on the oil administration's website within ten (10) days of their approval.
b The contractor shall strictly comply with the provisions of the approved ESIA and ESMP.

c) As from the issuance of an operating permit, the contractor is required to conduct an annual environmental audit by an independent firm to ensure compliance with the provisions of the ESIA and ESMP and with the standards referred to in Article 59 (a) of the Oil Code, and to submit the audit report to the Ministry in charge of the environment.

Are there any consequences of a breach of environmental obligations for the rights holder?

Article 121 of the Oil Code provides: *"Without prejudice to the proceedings and penalties provided for in the provisions of this Code, the Oil Administration may order the immediate cessation of work in the event of a serious infringement affecting the safetý of third parties or the environment.*
In an emergency, the necessary measures may be carried out ex officio by the competent services at the expense of the holder of the Oil rights."

In addition, in accordance with Article 108 of the Oil Code, when the contractor commits a serious breach of the provisions of the Oil Code and the texts adopted for its application, the oil agreement may be terminated under the conditions specified in the oil agreement.

The consequences of a breach of environmental obligations for the oil rights holder can range from the suspension of work, with the payment of a fine, to the termination of the oil agreement.

Based on Article 61 of the Oil Code, liability for non-compliance with an environmental obligation is established in accordance with the Environmental Code.

Thus, in accordance with Article 203 of the Guinean Environmental Code, the implementation of a development project without an environmental and social impact study, or the implementation of a project that does not comply with the criteria, measures, and standards of the environmental and social impact studies, is punishable by a prison sentence of 2 to 5 years and fines of 100 million to 1 billion Guinean francs.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

No, it is limited to oil rights holders who are in violation of environmental provisions.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Article 57 of the Oil Code provides that:

"Contractors must draw up before the start of Oil Operations, and thereafter regularly update and apply, a hygiene, health and safety management plan. This plan must include measures, objectives, and standards in line with best practices used in the international oil industry concerning the design, operation and maintenance of any plant or equipment used in Oil Operations to prevent or reduce risks to persons employed or present on or near the sites. This plan must include employee health and safety regulations and an emergency preparedness plan.

Hygiene, health, and safety management plans, including any amendments to these plans, must be submitted to the Oil Administration for approval, after consultation with the ministries in charge of health and labor.

Contractors must provide the Oil Administration and the relevant ministries and departments with all reports on site health and safety performance required by applicable regulations and by the Oil agreements".

It is clear from this Article that a health and safety management plan is required.

Which entity is responsible for the enforcement of health and safety regulations or obligations?

In terms of health and safety regulations and obligations, the entities responsible are :

- the Ministry of health;
- the labor inspectorate; and
- the oil administration.

Are there any consequences of a breach of these requirements for the rights holder?

Under Article 123 of the Oil Code a breach of health and safety regulations may result in the payment of a fine of between fifty thousand (50,000) and two hundred thousand (200,000) US dollars, and imprisonment for between two (2) months and one (1) year.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

Based on our extensive research of the relevant legislation, it should be noted that there is no provision expressly stating that liability for breach of health and safety obligations extends to its shareholders, directors, officers, and employees.

In our view, this explains why liability for breaches of health and safety obligations in the oil sector will only apply to right holders.

DECOMMISSIONING

What are the decommissioning and abandonments requirements and obligations for oil and gas rights holders in your jurisdiction?

Under Article 43 of the Oil Code, all oil agreements must provide that, before the reserves of a deposit are exhausted, the contractor must submit a site rehabilitation plan and corresponding budget to the Minister in charge of hydrocarbons for approval.

Article 44 of the Oil Code provides that at the end of a contract, ownership of all works enabling the continuation of activities, and of all material or equipment whose cost has been fully recovered by the contractor, is transferred to the State free of charge. For any works which the State does not wish to transfer, the contractor must restore the site in accordance with the rehabilitation plan.

Are there any particular events or timelines that trigger decommissioning obligations?

The events that may trigger decommissioning obligations are (among others):

- breach of the regulations in force, resulting in the termination of all operating authorizations;
- the end of oil operations;
- the occurrence of force majeure events making it impossible to continue oil operations; and
- compulsory purchase and any other measure justifying the public interest.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

- Corporate income tax;
- Value added tax;
- Employee income tax ; and
- Withholding tax (for persons not taxable in the Republic of Guinea).

Are there any tax incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

Yes, in accordance with Article 88 of the Oil Code, with the exception of the corporate income tax referred to in Article 77 of the said Code, the companies constituting the contractors are exempt from all other direct taxes levied on the results of oil operations on national territory, and from all taxes, duties or levies of any kind whatsoever levied on the production or sale of hydrocarbons and any income relating thereto or payable on oil operations or on the occasion of the establishment and operation of the said companies.

In addition, under Article 94 of the Oil Code, materials, equipment, machinery and vehicles, spare parts and consumables intended for oil operations and appearing on the specific customs lists drawn up in accordance with the provisions of Article 95 of the Oil Code may be imported (i) either free of customs duties and taxes, (ii) or under temporary admission with suspension of customs duties and taxes for those intended to be re-exported after use.

Are these incentives and exemptions routinely granted?

The incentives and exemptions provided for in the Oil Code and the General Tax Code are available to all investors whose activities comply with the legislative and regulatory provisions in force.

What is the procedure for obtaining any applicable incentives and exemptions?

The applicable legal texts do not expressly specify a special procedure to be followed in obtaining incentives and exemptions on oil and gas operations in the Republic of Guinea. These incentives and exemptions on oil operations are generally obtained based on negotiations between the parties.

However, it should be noted that in accordance with the 2021 Guinean Finance Act, all tax and customs exemptions granted to a taxpayer in the Republic of Guinea must be ratified, promulgated, and published in the official gazette of the Republic.

STABILISATION RIGHTS

Are there any forms of stabilisation rights granted to investors in the oil and gas sector?

Yes, in accordance with Article 111 of the Oil Code, the oil agreement may include a clause to stabilise the legislative and regulatory framework at the date of entry into force of the contract. Thus, where a change in the legislative or regulatory framework occurs after the date of entry into force of the oil agreement, which upset its economic equilibrium, the contractor can apply to request either the non-application of the financially aggravating provisions or an adjustment of the contractual provisions to restore the initial economic equilibrium.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

There is no investment threshold required under the Oil Code to be eligible for a stabilisation agreement in the Republic of Guinea.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

Based on our experience, stabilisation clauses have always been complied with by the State, regardless of changes in political regimes.

However, please note that agreements providing for these stabilisation clauses must be ratified by the National Assembly and published in the official gazette to be effective.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

To the best of our knowledge, no.

DISPUTES

Are there any statutorily prescribed procedures for the resolution of disputes?

Under Article 112 of the Oil Code, disputes between the State and a Contractor arising from the interpretation and/or performance of the oil agreement, or from the application of the Oil Code and/or the texts adopted for its application, are subject to international arbitration and/or, where appropriate, technical expertise under the conditions set out in the Oil agreement.

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

See above.

We are not aware of any previous litigation in the oil sector, as we have no ongoing operations or research (this has been stopped for some time).

RWANDA
CERTA LAW

FIRM INFORMATION

Website address : www.certalaw.rw
Languages spoken : English, Kinyarwanda, and French
Telephone : +250788309964
Address : 1st Floor, ECD Plaza KN 4 Avenue, P.O. Box 7354, Kigali
Contact : Florida Kabasinga
Email : fkabasinga@certalaw.rw

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

The following laws govern activities related to upstream operations:

- Upstream Petroleum Law N° 13/2016 (the Petroleum Law) and Presidential Order N° 028/01 of 18/05/2023 clarifying responsibilities of the Rwanda Mines, Petroleum, and Gas Board (RMB)
- The Upstream Petroleum Policy of 2013 (the Petroleum Policy) is an additional guiding document for exploration and production activities in Rwanda

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

For upstream operations, the RMB is the main institution overseeing the application of laws and regulations.

The RMB is in charge of the regulation of the oil and gas sector with the following powers:

- to carry out inspections where operations related to oil and gas resources are conducted with the purpose of ensuring compliance with the licensees' obligations;
- to generate revenues;
- to impose administrative sanctions in case of violation of laws and regulations governing, oil and gas resources;
- to facilitate amicable settlement of disputes related to oil and gas resources.

Responsibilities of the RMB:

- elaborate policies, strategic plans, and regulations governing oil and gas resources for the benefit of the country;
- ensure compliance by license holders with the provisions of laws, regulations, directives, and standards governing, oil and gas industries in Rwanda;
- advise the Government on matters related to oil and gas resources;
- conduct research in oil and gas, and disseminate research findings;
- conduct exploration on oil and gas resources in the country;
- issue licenses for the exploration and production of oil and gas products;
- monitor the operations related to exploration and production of oil and gas products;
- follow up and study the market trend of minerals, quarries, oil and gas resources; and
- cooperate and collaborate with other regional and international institutions carrying out similar mission.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

All rights of ownership and control of petroleum resources on, in, or under any land in Rwanda are vested only in the State without prejudice to any right of ownership that any person may possess to the land.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

A company intending to carry out exploration applies for a license thereof to the RMB.

Where an appraisal program shows that the discovery area contains a petroleum reservoir or part of a petroleum reservoir that may be subject to production, the exploration licensee is given priority in applying for the production license.

Any other capable person may apply for the grant of a production license in respect of an area with a petroleum reservoir or a part of a petroleum reservoir that may be subject to production.

According to the Petroleum Law, any competent firm may apply for the license but it is the order of the CEO of RMB that determines modalities and requirements for the application for exploration or production license.

Please provide an overview of the procedure for obtaining such exploration and production rights.

The following steps are taken to obtain an exploration or production license:

a. application for exploration license
b. response to the application for the license: within 90 days of submitting the application, the applicant is informed as to whether the application is accepted or not. If accepted, the applicant is invited for negotiations for an agreement for exploration
c. granting of exploration license: The government enters into an agreement with the applicant and thereafter the minister grants an exploration license to the applicant . Within seven (7) days after the agreement between the Government and the applicant is concluded and signed by both parties, the Minister grants to the applicant the exploration license

Are there any fees and charges applicable to obtaining these rights?

Among other modalities and requirements, the order of the CEO of the RMB may specify whether fees or charges are included for the issuance of exploration or production license.

What is the duration of the exploration and production rights?

a. The duration for an exploration license is three (3) years.
b. The duration for a production license is twenty-five (25) years.

Are the exploration and production rights renewable? What are the renewal processes?

Both licenses are renewable upon written application.

a. The renewed exploration license remains valid for a period not exceeding three (3) years renewable only once for not more than two (2) years.
b. Production license is renewable only once for an additional ten (10) years.

Does the state have any direct or indirect right or interest in exploration, development, and production operations?

According to the Petroleum Policy, the majority of petroleum exploration activities are to be carried out by oil exploration and development companies. However, the Government may directly invest in exploration if deemed necessary.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

The Petroleum Law or the Petroleum Policy does not distinguish requirements for local or foreign participation in relation to the acquisition of exploration and production licenses.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

There are not.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

The Petroleum Law or Petroleum Policy does not specifically outline local content requirements. However, it is a common practice, and over negotiations, it is encouraged that companies in the oil and gas sector use local suppliers, hire local workers, and invest in local infrastructure and skills development.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

A licensee has the option to transfer or assign their license to another person or entity, but only with prior written approval from the competent authority (RMB). During the evaluation, the competent authority considers the capacity of the new entity to fulfill the obligations associated with the license. The transfer or assignment becomes official once the competent authority issues a written approval
The modalities for transferring a license are determined by an Order of the RMB CEO. This order is however yet to be put in place. Issues related to fees, taxes, or other charges applicable to transfers are expected to be provided in this Order.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

There is currently no specific legal provision for entities holding exploration and production rights in the oil and gas sector. However, An exploration license related to a petroleum discovery area may cease to have effect where:
1. the exploration licensee fails to apply for a production license within the period specified;
2. the discovery is not of commercial interest.

And the CEO of RMB may cancel a license where the licensee fails to comply with the provisions of petroleum Law, the petroleum agreement or the conditions of the license. The license is also cancelled if the CEO of RMB has given the licensee at least thirty (30) days written notice of the intention to do so and the licensee did not take remedial action.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

The transfer of license is applied for in writing to the CEO of the RMB who also determines the modalities for the transfer. The following acts are considered as transfers:
a. any license sale or assignment in any form;
b. mortgaging a license or seizing a mortgaged license;
c. transfer of proceeds from dominant shares belonging to any licensee;
d. acquiring proceeds from dominant shares with reference to a licensee.

After transfer registration, the transferee exercises rights, and obligations and carries out any other activity as may be required of the license transferor.

Are rights holders allowed to create security over their exploration and production rights?

As discussed in the response to 15 above, the mortgaging of a licence is considered to be a transfer of the licence. Accordingly, a person seeking to create a security over an exploration or production licence must similarly apply to the CEO of the RMB.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations ?

There are prescribed durations for exploration operations according to the upstream petroleum law. An exploration license is valid for a period of three years, whereas a production license can be issued for 25 years. However, it's important to note that these durations pertain to the validity of the licenses themselves, not the actual duration of exploration or production activities. For instance, while an exploration license is valid for three years, the exploration activities may last for only two years or even less. Similarly, even though a production license is valid for 25 years, the production activities could extend up to 30 years, depending on the complexity of the petroleum reserve. This distinction clarifies that the license validity does not necessarily dictate the duration of operational activities in the field.

Are there prescribed minimum work and expenditure obligations for exploration operations in the oil and gas sector?

Based on current law, minimum work and expenditure obligation for exploration operations are not indicated.

Are there any compulsory relinquishment requirements?

There are compulsory relinquishment requirements specified within the framework of a petroleum agreement. A licensee may opt to relinquish any part of the area covered by their license, but this action requires formal communication through written notice to the CEO of the Rwanda Mines, Petroleum, and Gas Board (RMB). This notice must clearly state the intended date of effect for the relinquishment and specifically identify the area to be relinquished. Additionally, it must include details of any exploration or production operations that have been carried out in the area intended for relinquishment.

The timing for submitting this notice varies depending on the type of license held. For an exploration license, the notice must be submitted at least three months prior to the proposed date of relinquishment. For a production license, this period extends to at least twelve months before the proposed relinquishment date. It's critical to note that relinquishment is contingent upon the condition that it does not interfere with the enforcement of any terms and conditions of the petroleum agreement or hinder any actions related to breaches of the law, the agreement, or the license provisions.

What are the conditions for transitioning from exploration to development and production?

The conditions for transitioning from exploration to development and production under the Petroleum Law are as follows:

a. within a period not exceeding two (2) years of the submission of the notice that the discovery is of commercial interest, the exploration licensee must prepare an appraisal program to be approved by the RMB CEO in order to provide resulting details from the appraisal program.

b. where an appraisal program shows that the discovery area contains a petroleum reservoir or part of a petroleum reservoir that may be subject to production, the exploration licensee is given priority in applying for the development and production license.

c. any other capable person may apply for the grant of a production/development license in respect of an area with a petroleum reservoir or a part of a petroleum reservoir that may be subject to production.

d. A person intending to carry out production activities must apply for a license from the RMB CEO.

What are the conditions for commencement of production operations in Mozambique oil and gas sector?

Before commencing production operation, a licensee has to agree that he will carry out production activities in a proper and safe manner and in accordance with petroleum exploration and production good practices.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

a. **Obtaining a license from Rwanda Utilities Regulatory Authority (RURA):** RURA is responsible for regulating certain activities in the oil and gas industry in Rwanda including the processing, refining and export of petroleum. RURA issues licenses for refining and export of oil and gas operations, sets standards for oil and gas products, and monitors compliance with the Petroleum Law and other regulations.

RMB responsibilities in the oil and gas sector starts from Exploration and end with production.

b. **Submitting an EMP to the Rwanda Environment Management Authority (REMA):** The Environmental Management Plan (EMP) is a requirement for all oil and gas projects in Rwanda. The EMP must identify and assess the potential environmental impacts of the project and outline measures to mitigate those impacts.

c. **Complying with RSB standards for oil and gas products:** The Rwanda Bureau of Standards (RSB) is responsible for setting standards for the quality of oil and gas products in Rwanda. RSB also conducts testing and certification of oil and gas products.

d. **Obtaining a health and safety certificate from the Rwanda Ministry of Health**

e. **Complying with the requirements of the Rwanda Labor Code**

What are the requirements and restrictions for the export of oil and gas produced in jurisdiction? Please specify any applicable domestic supply requirements.

a. Obtaining an export license from RURA: The license is obtained through submitting a detailed export plan, destination country, quantity of petroleum products to be exported, and the price at which it will be sold.

b. Complying with Rwanda Standards Bureau (RSB) standards for oil and gas products: RSB conducts testing and certification of petroleum products to ensure that they meet its standards before they can be exported.

c. Paying export taxes: All oil and gas exports from Rwanda are subject to export taxes. The rate of export tax varies depending on the type of oil and gas product being exported.

d. Meeting domestic supply requirement: It means that companies who want to export petroleum products must first supply the Rwandan domestic market with a certain amount of oil and gas before they can export any surplus. The domestic supply requirement for oil and gas is 25%.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

There is no competitive industry for upstream oil and gas services in Rwanda., as no company provides upstream oil and gas services.
For upstream petroleum industry, there is no company that provides oil and gas services.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

IBased on current status of Rwanda upstream petroleum industry, there is neither local company nor international company that is doing oil and gas services. However, the requirements for applications and authority in charge are indicated in the table below:

REQUIREMENTS	AUTHORITY IN CHARGE
Company and business registration	**RDB**
Licensing service operations for downstream, issuing temporary authorization for the transport of petroleum products within the country	**RURA, MINICOM**
Tax payment registration	**Rwanda Revenue Authority**
Environmental permit:	**Rwanda Environment Management Authority**
Exploration- production services permits	**Rwanda Mines Petroleum and Gas Board**
Work permit/ in case the company is foreign	**Rwanda Directorate of Immigration and Emigration**

Are there compulsory local content requirements applicable in the operation of oil and gas services companies in Mozambique ?

Not specified but companies in the oil and gas sector are strongly encouraged to use local suppliers, hire local workers, and in local infrastructure and skills development.

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?

REMA is responsible for enforcing environmental regulations in Rwanda. All oil and gas companies operating in Rwanda must comply with all applicable environmental regulations including the Environmental Protection Act, Atmospheric Pollution Control Act, and Water Resources Act.

In this regard, the following (not limited) are authorizations and obligations to be applied in oil and gas operations in Rwanda:

Environmental Impact Assessment (EIA), Environmental Management Plan (EMP), Environmental Monitoring and Reporting, Waste Management, Air Quality, Water Quality, biodiversity conservation

Are there any consequences of a breach of environmental obligations for the rights holder?

There are consequences for rights holders who breach environmental obligations. The Rwanda Environment Management Authority (REMA) possesses several enforcement tools, including fines, imprisonment, and revocation of licenses. Fines can vary from moderate to significant amounts and are applied for failures to comply with environmental regulations related to drilling waste management, air emissions, or water pollution. The severity of the fines depends on the extent of the violation and its impact on the environment.

Imprisonment terms can also vary, depending on factors such as the extent of environmental harm caused, the violator's intent, and the relevant laws. For instance, individuals convicted of illegal extraction or smuggling of petroleum resources may face imprisonment ranging from several months to several years.

Additionally, REMA has the authority to revoke licenses for severe violations, further emphasizing the importance of adherence to environmental obligations and regulations.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

The liability of the rights holder for breach of environmental obligations in Rwanda can extend to its shareholders, directors, managers, and employees, depending on the specific circumstances.

Law N° 007/2021 of 05/02/2021 governing companies provides that, with the exception of an unlimited liability company, a shareholder is not liable for the obligations of a company only because of being a shareholder. Court may however pierce the corporate veil to hold a shareholder liable for obligations of the company if the court finds that the shareholder has abused the company status form for fraudulent or illegal purposes or abused the company's assets as if they were personal assets.

The law further provides that if, in any proceedings for negligence, fraud, breach of duty, or breach of trust against a director, secretary, or auditor of the company, it appears during a court hearing that the director, secretary or auditor is or may be liable, but that he or she acted with good faith and reasonably, and that, having regard to all the circumstances of the case, including those connected with his or her appointment, he or she ought fairly to be excused, the court may relieve him or her, either wholly or partly, from liability on terms as the court may consider appropriate.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Yes, the requirements may include the following:

a. obtaining a health and safety certificate from the Rwanda Ministry of Health
b. establishing a health and safety committee
c. conducting risk assessments
d. providing health and safety training
e. using personal protective equipment (PPE)
f. monitoring health and safety performance
g. reporting incidents and accidents
h. enforcement of health and safety regulations

Which entity is responsible for the enforcement of health and safety regulations or obligations in the gas sector?

The RMB is responsible for the enforcement of health and safety regulations in the upstream petroleum industry.

Are there any consequences of a breach of these requirements for the rights holder?

RMB has powers to enforce health and safety regulations in the oil and gas sector as well as impose sanctions when a breach has occurred. For example, Suspension or Revocation Licenses, pursuing legal action, including criminal prosecution, etc..

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

Yes, the liability of the rights holder for breach of health and safety obligations may extend to its shareholders, directors, managers, and employees.

Law N° 007/2021 of 05/02/2021 governing companies provides that, with the exception of an unlimited liability company, a shareholder is not liable for the obligations of a company only because of being a shareholder. Court may however pierce the corporate veil to hold a shareholder liable for obligations of the company if the court finds that the shareholder has abused the company status form for fraudulent or illegal purposes or abused the company's assets as if they were personal assets.

The law further provides that, if in any proceedings for negligence, fraud, breach of duty, or breach of trust against a director, secretary, or auditor of the company, it appears that the director, secretary or auditor is or may be liable, but that he or she acted with good faith and reasonably, and that having regard to all the circumstances of the case, including those connected with his or her appointment, he or she ought fairly to be excused, the court may relieve him or her, either wholly or partly, from liability on terms as the court may consider appropriate.

DECOMMISSIONING

What are the decommissioning and abandonment requirements and obligations for oil and gas rights holders in your jurisdiction?

In line with the Petroleum Law, the production licensee submits a decommissioning plan to the CEO of RMB for approval. An order of the RMB CEO determines the content of the decommissioning plan. A production licensee is required to set up a decommissioning fund within a period specified by the CEO of RMB. An Order of the Minister determines the disbursement, amount, use and management of such funds.

Are there any particular events or timelines that trigger decommissioning obligations?

Not specified.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

There are no special taxes for the upstream petroleum sector, normal company taxes in Rwanda apply. Companies incorporated in Rwanda are subject to the Rwanda Tax regime and are expected to pay such taxes as Corporate Income Tax (CIT), which is levied at 28% of annual profit, Value Added Tax (VAT) at 18%, Pay As You Earn (PAYE)—a progressive tax applied at varying rates on employees' salaries—and various withholding taxes on payments for services. etc.

Based on current upstream petroleum law, royalties, acreage fees payable by exploration and production companies are not specified.

Are there any tax Incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

Under the Rwanda Investment Code, 2021 (Law N° 006/2021 of 05/02/2021 on Investment Promotion and Facilitation), mineral exploration is among the priority economic sectors that benefit from investment incentives, including the following tax incentives subject to listed conditions;

- for an international company with its headquarters or regional office in Rwanda, a preferential corporate income tax rate of 0 percent;
- for any investor, a preferential corporate income tax rate of 15 percent;
- corporate income tax holiday of up to seven years;
- exemption from customs tax for products used in Export Processing Zones (EPZ);
- exemption from capital gains tax; and
- VAT refund.

The Law further provides that the Cabinet may grant to a registered investor for strategic investment projects additional investment incentives to the incentives provided for by this Law. Strategic investment projects are investment projects of national importance, which have a strategic impact on the development of the country. One of the criteria provided by Law that may fit investment in the oil and gas sector is that which is considered an investment of significant scale in terms of the investment amount, production outputs, and number of jobs created.

What is the procedure for obtaining any applicable incentives and exemptions?

The Investment Code 2021 guides the procedure for applying for incentives and exemptions.

Strategic investment projects that meet qualifying criteria and corresponding additional investment incentives are approved by the Cabinet upon proposal of the Private Investment Committee.

The proposal to approve strategic investment projects and corresponding additional investment incentives indicates the following:

- sector of the investment;
- estimated investment amount;
- estimated number of jobs to be created;
- corresponding additional investment incentives necessary for the successful implementation of the project;
- commercial and economic impact of the investment and where applicable, a cost-benefit analysis of the investment incentives to be granted.

Upon approval of strategic investment projects and their corresponding additional investment incentives, an agreement is negotiated between the registered investor and the Government.

STABILISATION RIGHTS

Are there any forms of stabilization rights granted to investors in the oil and gas sector?

Currently, there are no freezing or economic equilibrium stabilisation rights provided by law. However, these rights can be negotiated with the Rwandan government if an investor wishes to seek such protection.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

No.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

The Rwandan government complies with the terms of contractual agreements that it enters into. The government has a strong track record (per World Bank report 2021, IMF report 2022) of honoring its commitments to investors, and it is committed to providing a stable and predictable investment environment.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

No common issues have not arisen since there has not been significant activity in the sector.

DISPUTES

Are there any statutorily prescribed procedures for the resolution of disputes?

The Investment Code-2021 provides various avenues for dispute resolution, including statutory procedures, alternative dispute resolution (ADR), and International Arbitration.

A dispute that arises between an investor and a State organ in connection with a registered investment is amicably settled.

If an amicable settlement cannot be reached, parties refer the dispute to an agreed arbitration institution or to any other dispute settlement procedure provided for under an agreement between both parties.

If no dispute settlement procedure is provided under a written agreement, both parties refer the dispute to the competent court.

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

Not applicable.

SOUTH AFRICA
WERKSMANS ATTORNEYS

FIRM INFORMATION

Website address : **www.werksmans.com**
Languages spoken : **English**
Telephone : +27 11 535 8000
Address : The Central, 96 Rivonia Rd, Dennehof, Sandton, 2196
Contact : Nkonzo Hlatshwayo and Dale Adams
Email : nhlatshwayo@werksmans.com and dadams@werksmans.com

SOUTH AFRICA I WERKSMANS ATTORNEYS

RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

- The oil and gas sector is currently regulated by the Mineral and Petroleum Resources Development Act No 28 of 2002 ("MPRDA") and the Mineral and Petroleum Resources Development Regulations (GNR.527 of 23 April 2004) ("Regulations"). We say currently because the oil and gas sector will soon be regulated by a separate, new piece of legislation currently in bill form called the Upstream Petroleum Resources Development Bill ("Upstream Bill") which has been sent to the President for assent, as the final step before it becomes law.

- The MPRDA states that the petroleum resources of the country are the common heritage of the people of South Africa and the state, duly represented by the Minister of Minerals and Energy ("Minister"), who is the custodian thereof for the benefit of all South Africans. Chapter 6 of the MPRDA contains the legislative framework for petroleum exploration and production activities in South Africa. The definition of "petroleum" contained in the MPRDA includes "any liquid, solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust".

- The essence of the Upstream Bill is that it seeks to ensure that the upstream petroleum sector is regulated not under the MPRDA, but under standalone legislation - the Upstream Bill. The Upstream Bill introduces a separation of the regulatory frameworks governing mining and upstream petroleum exploration and production which are currently dealt with together under the MPRDA. This separation allows the emerging and nuanced upstream oil and gas sector to be regulated entirely separately from the more established mining sector. The regulatory framework created under the Upstream Bill brings about a certain level of regulatory certainty which should result in more investor confidence.

- Given that the Upstream Bill is still in bill format and not law as yet, the discussion below is focused on the MPRDA. However, the salient provisions of the Upstream Bill are as follows -

  - o the Upstream Bill provides for the establishment of the Petroleum Agency of South Africa (SOC) Limited ("Petroleum Agency" and/or "PASA") as the authority designated to perform functions referred to in section 10 of the Upstream Bill;
  - o the Upstream Bill proposes the introduction of a petroleum right which will govern the key terms of both the exploration phase and the production phase and will replace the granting of separate exploration and production rights;
  - o different time period for petroleum rights depending on the location and status of acreage;
  - o the government/state has a right to a 20% carried interest under the Upstream Bill (during exploration and production phase). Holders will be entitled to recover a maximum of 50% and 100% of the state's proportionate share of exploration and production costs, respectively. The percentage allocation of the State's entitlement and cost recovery rules will be as prescribed in Regulations;
  - o every petroleum right must have a minimum 10% black participation (i.e. historically disadvantaged persons ("HDPs"));
  - o an exploration and or production right may be granted only to a company incorporated in South Africa under the relevant company laws of South Africa; and
  - o the Upstream Bill requires that a petroleum right holder must sell a percentage of petroleum at the prevailing market price to the State Petroleum Company or any other state-owned entity designated by the Minister to meet the State's strategic stock requirements, subject to terms and conditions to be agreed upon.

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

The main regulatory bodies responsible for overseeing upstream oil and gas operations are -

- **The Department of Mineral Resources and Energy ("DMRE")**

  - o The DMRE is responsible for the regulation, transformation and promotion of the mineral and energy sector. The DMRE also oversees compliance with the provisions of the MPRDA and NEMA in relation to the mining sector as well as the oil and gas sector in South Africa.
  - o The DMRE, duly represented by the Minister and his or her delegates, is responsible for the granting, issuing or refusal of the rights and permits under the MPRDA and serves as the competent authority for the granting of environmental authorisations in terms of National Environmental Management Act 107 of 1988 ("NEMA") in accordance with Section 38A of the MPRDA.
  - o In addition to the granting or refusal of rights under the MPRDA, the Minister and his or her delegates are empowered to cancel or suspend permits and rights should the holder thereof, inter alia, conduct its operations in contravention of the MPRDA, breach the terms and conditions of its right or permit or contravene a condition in the environmental authorisation.

- **PASA**

  - o The Petroleum Agency is the designated Agency in terms of section 70 of the MPRDA.

- o Its functions, which are fully set out in section 71, include the following, namely, to:
  - promote onshore and offshore exploration for and production of petroleum;
  - receive applications for reconnaissance permits, technical co-operation permits, exploration rights and production rights in the prescribed manner;
  - evaluate such applications and make recommendations to the Minister;
  - monitor and report regularly to the Minister in respect of compliance with such permits or rights; and
  - receive, maintain, store, interpret, evaluate, add value to, disseminate or deal in all geological or geophysical information relating to petroleum submitted in terms of section 88.
- o In sum, the Petroleum Agency oversees the overall management of South Africa's petroleum resources, acts in an advisory role to the Minister in relation to processing and granting of permits and promotes exploration and production activities in South Africa.

- **The Mineral and Petroleum Titles Registration Office ("MPTRO")**

The MPTRO is responsible for the registration of exploration and production rights and the recording of reconnaissance and technical cooperation permits (TCPs).

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

- The petroleum resources (including oil and gas) of the nation are the common heritage of the people of South Africa, and the state, duly represented by the Minister who is the custodian thereof for the benefit of all South Africans.

- As the custodian of the nation's petroleum resources, the state, acting through the Minister may -

  - o grant, issue, refuse, control, administer and manage any exploration and production rights; and

  - o in consultation with the Minister of Finance, prescribe and levy or any fee payable in terms of the MPRDA.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

In the context of petroleum, the MPRDA provides for four types of granting instruments, namely -

- **An exploration right**
  - o An application to grant an exploration right and the application documents to be submitted in support of such application are expressly set out and listed in section 79 of the MPRDA read with Regulation 28 and Form M, Annexure I of the Petroleum Regulations.
  - o In terms of section 79(1), the application once prepared and compiled by the applicant must be lodged at the office of the Petroleum Agency, in the prescribed manner, together with a prescribed non-refundable application fee.
  - o The Petroleum Agency must, in terms of section 79(2) of the MPRDA, accept an application for an exploration right if such application has met the requirements of section 79(1) and no other person holds a technical cooperation permit, exploration right or production right for petroleum over any part of the same area.
  - o The Petroleum Agency must, in terms of section 79(2) of the MPRDA, accept an application for an exploration right if the application has met the requirements of section 79(1) and no other person holds a TCP, exploration right or production right for petroleum over any part of the same area. In the event that an application for an exploration right does not comply with the acceptance requirements contained in Section 79(1) and Section 79(2) of the MPRDA, then the Petroleum Agency must notify the applicant in writing of that fact within 14 days of receipt of the application and return the application to the applicant.
  - o If an application for an exploration right meets the acceptance criteria, then the Petroleum Agency must, within 14 days from the date of such acceptance, require the applicant to -
    - notify and consult with any landowner, lawful occupier and any interested and affected party; and
    - prepare and submit the relevant environmental reports required in terms of Chapter 5 of NEMA.
  - o The MPRDA states that an exploration right must be granted by the Minister if the criteria set out in Section 80 of the MPRDA has been demonstrated by the applicant and met. Exploration rights are granted for an initial period of three years and on application can be renewed for up to three further periods not exceeding two years each.
  - o An application for renewal of an exploration right must be granted if the holder of the exploration right has complied with the terms and conditions of the exploration right, the approved exploration work programme and the provisions of the Act.
  - o An application for renewal of an exploration right, and the application documents to be submitted in support of such application are expressly set out and listed in Section 81(1) and (2) of the MPRDA read with Regulation 33 and Form M, Annexure I of the Petroleum Regulations. Neither the MPRDA nor the Petroleum Regulations as stated above require an applicant for renewal to relinquish an exploration area in order for the application to be accepted by the Petroleum Agency. An exploration right that is the subject of a renewal application will remain in force until such time as the application has either been accepted or rejected. The

holder on an exploration right has the exclusive right to apply for a production right over the exploration area.

- **A production right**
  - o An application for the grant of a production right and the application documents to be submitted in support of such application are expressly set out and listed in Section 83 of the MPRDA read with regulation 34 and Form N, Annexure I of the Petroleum Regulations. In terms of Section 83(1), the application once prepared and compiled by the applicant must be lodged at the office of the Petroleum Agency, in the prescribed manner, together with a prescribed non-refundable application fee.
  - o The Petroleum Agency must, in terms of Section 83(2) of the MPRDA, accept an application for a production right if such application has met the requirements of Section 83(1) and no other person holds a technical cooperation permit, exploration right or production right for petroleum over any part of the same area. In the event that an application for a production right does not comply with the acceptance requirements contained in Section 83(1) and (2) of the MPRDA, then the Petroleum Agency must notify the applicant in writing of that fact within 14 days of receipt of the application and return the application to the applicant.26 A production right is valid for 30 years and is renewable for further periods each of which cannot extend beyond 10 years.
  - o The terms and conditions of the reconnaissance permits, TCPs, exploration and production rights are open to negotiation but must comply with the provisions of the MPRDA and must be approved by the Minister.
  - o Exploration rights (including any subsequent notarial deed of renewal or assignment) and production rights must be lodged for registration at the MPTRO within 60 days from the date of execution thereof. The Regulations to the Mining Titles Act provide that the MPTRO must register an exploration right within 10 working days from the date days this is lodged with the MPTRO. Once an exploration right or production right has been registered by the MPTRO, it creates a real right which is enforceable against third-party claims.

- **A reconnaissance permit**
  - o A reconnaissance permit may be applied for under Section 74 of the MPRDA. Under this permit, the holder is permitted to undertake only geological, geophysical or photographical surveys and any remote sensing techniques.
  - o This permit is valid for 1 year and cannot be renewed.
  - o An application for the grant or issue of a reconnaissance permit, and the application documents to be submitted in support of such application, are expressly set out and listed in section 74 of the MPRDA read with regulation 18 and Form K, Annexure I of the Petroleum Regulations. Holders of a reconnaissance permit do not enjoy exclusive rights, and the permit holders are obliged, in terms of Regulation 22 of the Petroleum Regulations, to supply the Petroleum Agency with all data, reports and interpretation generated as soon as possible after completion of the operations.

- **A technical cooperation permit (TCP)**
  - o A TCP can be acquired under Section 77(1) of the MPRDA and enables the holder thereof to carry out desktop studies, acquire seismic data and data from other sources, including from the Petroleum Agency.
  - o This permit is valid for one year and cannot be renewed. In addition, one cannot conduct exploration activities under this permit. An application for the grant or issue of a TCP, and the application documents to be submitted in support of such application, are expressly set out and listed in section 76 of the MPRDA read with Regulation 23 and Form L, Annexure I of the Petroleum Regulations.
  - o In the event that an application for a TCP does not comply with the acceptance requirements contained in section 76(1) and section 76(2) of the MPRDA, the Petroleum Agency must notify the applicant in writing of that fact within 14 days of receipt of the application and return the application to the applicant.
  - o If an application for a TCP meets the acceptance criteria, then the merits of the application are assessed by the Petroleum Agency; such merits relate to the applicant's demonstration of its access to financial resources, technical ability and whether or not the applicant is in contravention of the MPRDA. TCPs are granted for a period not exceeding one year and are not transferable and not renewable. Holders of TCPs have an exclusive right to apply for an exploration right over the area covered by a TCP, and a TCP in respect of which an application for an exploration right has been lodged will remain in force until such time as the application for an exploration right has either been accepted or rejected.

Please provide an overview of the procedure for obtaining such exploration and production rights.

Please refer to the above response.

Are there any fees and charges applicable to obtaining these rights?

An application fee in respect of -

- a reconnaissance permit is R100.00;
- a prospecting right and a renewal thereof is R500.00;
- a mining right or a renewal thereof is R1000.00;
- a mining permit is R100.00;
- a retention permit or a renewal thereof is R5000.00; and
- the lodging of an appeal is R500.00.

In addition to the above, the Regulations also provide that application fees "for onshore and offshore permits and rights listed on the table below are as per base year 2023 and will increase by the annual average headline South African Rand (ZAR) Consumer Price Index (CPI), year on year. The applicable adjusted rates will be from the 1st of April every year and will be published on the Designated Agency's website.

The current fees are as follows -

DESCRIPTION	ONSHORE (R)	OFFSHORE (USE)
Reconnaissance permit	20,000.00	3500 or rand equivalent
Technical co-operation permit	10,000.00	1400 or rand equivalent
Exploration right or renewal thereof	30,000.00	4000 or rand equivalent
Production right or renewal thereof	50,000.00	4500 or rand equivalent

What is the duration of the exploration and production rights?

- An exploration right is granted for an initial period of three years and on application can be renewed for up to three further periods not exceeding two years each.

- A production right is valid for 30 years and is renewable for further periods each of which cannot extend beyond 10 years.

Are the exploration and production rights renewable? What are the renewal processes?

Exploration right
- Applications for renewals are decided by the Minister and an application for renewal must be lodged -
  - o at the office of the designated agency;
  - o in the prescribed manner; and
  - o together with the prescribed non-refundable application fee.
- An application for renewal must -
  - o state the reasons and period for which the renewal is required;
  - o be accompanied by a detailed report reflecting the exploration results, the interpretation thereof and the exploration expenditure incurred;
  - o be accompanied by a report reflecting the extent of compliance with the conditions of the environmental authorisation; and
  - o include a detailed exploration work programme for the renewal period.
- As the application satisfies the above requirements, then the Minister must grant the renewal provided that the application has complied with the -
  - o terms and conditions of the exploration right and is not in contravention of any relevant provision of the MPRDA or any other law;
  - o exploration work programme; and
  - o conditions of the environmental authorisation.
- An exploration right may be renewed for a maximum of three periods not exceeding two years each.
- An exploration in respect of which an application for renewal has been lodged shall, notwithstanding its expiry date, remain in force until such time as such application has been granted or refused.

Production right
- Applications for renewals are decided by the Minister and an application for renewal must be lodged -
  - o at the office of the designated agency;
  - o in the prescribed manner; and
  - o together with the prescribed non-refundable application fee.
- An application for renewal must -
  - o state the reasons and period for which the renewal is required;
  - o be accompanied by a detailed report reflecting the productions results, the interpretation thereof and the production expenditure incurred;
  - o be accompanied by a report reflecting the extent of compliance with the requirements of the approved environmental management programme the rehabilitation to be completed and the estimate cost thereof; and
  - o include a detailed exploration work programme for the renewal period.
- As the application satisfies the above requirements, then the Minister must grant the renewal provided that the application has complied with the -
  - o terms and conditions of the exploration right and is not in contravention of any relevant provision of the MPRDA or any other law;
  - o production work programme;
  - o the requirements of the prescribed social and labour plan; and
  - o requirements of the approved environmental management programme.
- A production right may be renewed for further periods each of which shall not exceed 30 years at a time.
- A production right in respect of which an application for renewal has been lodged, shall despite its expiry date, remain in force until such time as such application has been granted or refused.

Does the state have any direct or indirect right or interest in exploration, development, and production operations?

- The petroleum resources (including oil and gas) of the nation are the common heritage of the people of South Africa, and the state, duly represented by the Minister, is the custodian thereof for the benefit of all South Africans.

- Also, section 2 of the MPRDA sets out the objects of the MPRDA, which include:
  - o recognising the right of the state to exercise sovereignty over the mineral and petroleum resources in South Africa;
  - o promoting equitable access to mineral and petroleum resources to all South Africans; and
  - o expanding opportunities for historically disadvantaged persons by facilitating participation entry into the petroleum sector.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements in relation to the acquisition of exploration and production rights in your jurisdiction?

- Although not expressly provided for under the MPRDA, a standard condition contained in exploration and production rights is an option, afforded to the state, to participate via a 10% interest in all exploration and production rights granted by the Minister. A further standard term to exploration and production rights under the MPRDA includes the participation of historically disadvantaged persons. In this regard, the granting of production rights must give effect to the transformative objectives of the MPRDA, including the objects of the Charter For the South African Petroleum and Liquid Fuels Industry ("**Charter**") and Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018. The Charter enjoins all signatories to aid in the redistribution of ownership in the petroleum industry to HDPs. This usually translates into a condition under production rights whereby holders are required to onboard an HDP partner with a 10 per cent participating interest.

- Further to the above, the Upstream Bill, although not law as yet, provides that every petroleum right holder must have a minimum 10% black participation (HDP participation).

- The above is consistent with the objects of the MPRDA, in particular, the object to meaningfully expand opportunities for historically disadvantaged persons and to promote employment and advance the social and economic welfare of all South Africans.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

- There are no specific legislative requirements that relate to foreign persons seeking to acquire exploration and production rights. However, in terms of the Companies Act 71 of 2008 ("Companies Act"). A foreign company that carries on business activities in South Africa must either:
  - o register a branch with the Companies and Intellectual Property Commission within 20 business days after it first begins to 'conduct business activities' in South Africa; or
  - o acquire or incorporate a subsidiary company in South Africa.
- A holder of either production or exploration right qualifies as continually conducting business activities in South Africa. Accordingly, holders of such rights must ensure compliance with the Companies Act per the above.
- Please also refer to the discussion in paragraph 5 below for further requirements relating to work and expenditure obligations for exploration operations.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

There are none.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions if any, for the transfer or assignment of exploration and production rights? What fees, taxes or other charges apply to such transfers?

- The holder of an exploration right is able to cede or assign the exploration right or an interest therein, subject to the approval of the Minister. A cessionary or assignee will be required to prove, among other things, their technical and financial ability to conduct the proposed exploration operation optimally in accordance with the exploration work programme.
- Once the cession or assignment has been approved by the Minister, the cedent, cessionary (or assignor, assignee) and the Petroleum Agency, acting on behalf of the Minister must execute a notarial deed of assignment at the office of Petroleum Agency before a notary public (a Notarial Deed of Assignment). The cessionary or assignee is thereafter required to submit the Notarial Deed of Assignment for registration at the MPTRO within 60 days in accordance with the Mining Titles Registration Act, No. 16 of 1967. Once the Notarial Deed of Assignment has been registered with the MPTRO, it creates a real right that is enforceable against third-party claims.
- Section 102 of the MPRDA permits the holder of an exploration right to amend the terms and conditions of the exploration right and the exploration work programme but subject to obtaining prior Ministerial consent.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

Please refer to the above response.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

Please refer to the above response.

Are rights holders allowed to create security over their exploration and production rights?

Please refer to the above response.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations ?

Exploration rights are granted for an initial period of three years and on application can be renewed for up to three further periods not exceeding two years each.

Are there prescribed minimum work and expenditure obligations for exploration operations in the oil and gas sector?

- Before an exploration right is granted under the MPRDA, an applicant must submit an exploration work program, detailing the proposed exploration activities, including methods, timelines and costs.
- The Department requires this program to ensure that exploration will be conducted within the agreed timeframe and that financial and technical resources are adequate to fulfil the obligations.
- In terms of financial commitments, applicants must commit to a minimum level of expenditure for the exploration program in order demonstrate their financial capacity to carry out the proposed work program.

Are there any compulsory relinquishment requirements?

- Exploration right holders are obliged to progressively relinquish portions of their exploration area based on timelines and phases of the work programme.
- The specific relinquishment percentages and time are set out in the exploration work programme.

What are the conditions for transitioning from exploration to development and production?

- The conditions can be summarised as follows -
  - o there must be a discovery of a commercially viable resource during the exploration phase;
  - o there must be a production work programme and application for a production right;
  - o there must be compliance with environmental regulations and submission of an environmental management programme;
  - o there must be consultation with communities and stakeholders affected by the development;
  - o the Minister must approve the production right after all technical, environmental and financial conditions are satisfied.

What are the conditions for commencement of production operations in Mozambique oil and gas sector?

- There are several -
  - o the holder must obtain the production right;
  - o the holder must adhere to the approved work plan;
  - o there must be full compliance with all environmental regulations including an approved environmental management programme;
  - o adequate funds must be set aside for environmental rehabilitation;
  - o there must be compliance with health and safety laws.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions with respect to the processing and refining of oil and gas produced in your jurisdiction?

- At the outset, it is important to note that before any processing or refining of oil and gas can occur, a company must obtain a production right. This right allows the holder to develop, process and produce petroleum resources.
- The production right includes a production work programme that outlines all activities related to the development and processing of resources, including how the refining will be conducted.
- The construction of new upstream pipelines currently requires an application to NERSA.

What are the requirements and restrictions for the export of oil and gas produced in jurisdiction? Please specify any applicable domestic supply requirements.

- The International Trade Administration Act 71 of 2002 (“ITA Act”) provides that an exporter of petroleum products must obtain an export permit from the International Trade Administration Commission (“ITAC”).
- A requirement for the issuing of an export permit is that the exporter has obtained a recommendation from the DMRE. On 3 November 2006, DMRE published the Petroleum Export Guidelines. In terms of the Petroleum Export Guidelines, DMRE must issue a recommendation to an applicant seeking to export, inter alia, crude oil, unless it is the opinion of DMRE that such export may:
  - o result in a shortage of crude oil; or
  - o not be in the public interest to issue such recommendation.
- Applications for export recommendations must be made in writing to DMRE by completion of the relevant form supplied by ITAC. DMRE must within 24 hours of receipt of an application issue a recommendation to ITAC and issue a copy thereof to the applicant. If DMRE declines to do so, reasons must be provided. South Africa is currently not an exporter of crude oil; it is a net importer of both crude oil and gas.

SERVICES INDUSTRY

Is there a viable and competitive industry for oil and gas services in your jurisdiction?

- It is understood that South Africa has a developing and competitive oil and gas services industry particularly in exploration, drilling and support services. However the sector is still relatively small compared to other global markets.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

- The applicable requirements for the upstream market for oil and gas are dealt with above.
- There are no specific entry requirements for oil and gas service companies.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies in Mozambique ?

There are none.

ENVIRONMENTAL

What environmental authorisations and obligations apply to oil and gas operations in your jurisdiction?

- Oil and gas exploration and production activities are subject to several environmental authorisations and obligations all of which are aimed at ensuring that oil and gas activities are carried out in an environmentally sustainable manner.
- Key environmental authorisations are obligations are as follows -
  - o oil and gas projects are classified as listed activities under NEMA and therefore require an environmental authorisation before any exploration or production can commence.
  - o also, a detailed environmental impact assessment must be conducted assessing the potential environmental impacts of the proposed activities. The authorisation is granted by the Department of Forestry, Fisheries and Environment;
  - o there must be an environmental management programme as required in terms of the MPRDA. This EMP is a mandatory document that outlines how environmental impacts will be mitigated and managed during oil and gas operations;
  - o companies are required to make financial provisions for environmental rehabilitation;
  - o a water use licence is also required in terms of terms of the National Water Act, 1998 if the project involves using water from natural resources, disposing of effluent or wastewater into water resources and/or storing water in dams and reservoirs. This license is issued by the Department of Water and Sanitation.
  - o operators must comply with air quality standards as set out in the Air Quality Act, 2004; and
  - o operators must develop a waste management plan that complies with the National Management: Waste Act, 2008.

Are there any consequences of a breach of environmental obligations for the rights holder?

- A breach can result in -
  - o fines and/or penalties;
  - o suspension or revocation of licences;
  - o legal action; and
  - o reputational damage

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

Yes, under certain circumstances. For example, in terms of NEMA, directors and other company officers can be held personally liable if they fail to take reasonable steps to prevent environmental harm or if they were negligent.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Health and safety requirements for oil and gas operations are regulated in terms of the Mine Health and Safety Act 29 of 1996 ("**MHSA**") and Occupational Health and Safety Act 85 of 1993 ("**OHSA**").

Which entity is responsible for the enforcement of health and safety regulations or obligations in the gas sector?

- The Department of Employment and Labour ("**DEL**") enforces the OHSA and labour inspectors from the DEL conduct inspections, investigate incidents which help ensure compliance with health and safety requirements emanating from OHSA.
- The DMRE enforces the MHSA.
- NEMA provides for the appointment of environmental management inspectors ("**EMIs**") within the DMRE to control compliance with environmental obligations. These EMIs have the power to investigate, issue compliance notices and admission of guilt fines, and in more extreme cases hand over cases involving criminal liability to the National Prosecuting Authority for prosecution.
- It is important to note that relief can also be obtained from the courts in the event of a contravention of the OHSA or MHSA.

Are there any consequences of a breach of these requirements for the rights holder?

- The consequences for breaching health and safety requirements include -
  - o fines and penalties;
  - o suspension or closure of operations;
  - o criminal and/or civil liability; and
  - o reputational damage.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

Yes, under certain circumstances. For example, the OHSA and MHSA hold directors and other officers personally liable if they fail to ensure that the company complies with health and safety standards.

DECOMMISSIONING

What are the decommissioning and abandonment requirements and obligations for oil and gas rights holders in your jurisdiction?

- Holders of an exploration or production right must obtain a closure certificate in the event that:
  - o the right lapses, is abandoned or cancelled;
  - o the relevant operations are ceased; or
  - o any portion of the right is relinquished.
- Closure certificate applications must be submitted to the Petroleum Agency within 180 days of the lapse, expiry or cancellation of the right in question.
- In addition, an EA must be obtained to decommission the operations, with decommissioning now referred to as 'closure' in terms of the EIA Regulations and Listed Activities.
- The EIA process in support of the EA application must be initiated before the submission of an application for a closure certificate. Finally, on closure, an exploration or production right holder will be required to execute approved rehabilitation and closure plans.

Are there any particular events or timelines that trigger decommissioning obligations?

- Please refer to the above response. In particular, holders of an exploration or production right must obtain a closure certificate in the event that:
  - o the right lapses, is abandoned or cancelled;
  - o the relevant operations are ceased; or
  - o any portion of the right is relinquished.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

- It is important to note that the South African Revenue Service (SARS) is responsible for collecting revenue and ensuring compliance with tax laws.
- The taxes that are applicable to the oil and gas industry may include:
  - o income tax and capital gains tax in terms of the Income Tax Act 58 of 1962;
  - o value added tax, levied under the Value Added Tax Act 89 of 1991;
  - royalties, which are imposed by the Mineral and Petroleum Resources Royalty Act 28 of 2008 read with the Mineral and Petroleum Resources Royalty 29 of 2008 (Administration) Act; and
  - carbon tax, imposed in terms of the Carbon Tax Act 15 of 2019.

Are there any tax Incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

Please refer to the above response.

What is the procedure for obtaining any applicable incentives and exemptions?

Please refer to the above response.

STABILISATION RIGHTS

Are there any forms of stabilization rights granted to investors in the oil and gas sector?

- There are none.
- However, investors in the oil and gas sector can benefit from certain protections explained as follows -
  - o the MPRD which provides the regulatory framework for oil and gas exploration and production ensuring that investors have clear legal pathways for securing exploration and production rights; and
  - o contractual protections in terms of which investors can negotiate contractual clauses in their agreements with holders of production or exploration rights in order to protect their interests.
- Also, the Protection of Investment Act 22 of 2015 ("PIA") provides a degree of protection to investors in relation to their investments and aiming to achieve a balance of rights and obligations that apply to all investors. The PIA attempts, among other things, to codify standard bilateral investment treaties ("BITs") provisions and provide domestic legislation that deals with investor-state relations.
- The PIA sets out a national treatment standard, a physical security of property standard, and a right to transfer funds as follows -
  - o Physical security of property: South Africa must accord foreign investors and their investments a level of physical security as may be generally provided to domestic investors in accordance with minimum standards of customary international law and subject to available resources and capacity.
  - o National treatment: Foreign investors and their investments must not be treated less favorably than South African investors in similar circumstances.
  - o Transfer of funds: A foreign investor may, in respect of an investment, repatriate funds subject to taxation and other applicable legislation.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

- There are no thresholds.
- However, in order to obtain protection in terms of the PIA, the investment made must be covered by the PIA. In terms of the PIA, an investment is defined as -
  - o any lawful enterprise established, acquired or expanded by an investor in accordance with the laws of South Africa, committing resources of economic value over a reasonable period of time, in anticipation of profit;
  - o the holding or acquisition of shares, debentures or other ownership instruments of such enterprise; or
  - o the holding, acquisition or merger by such an enterprise with another enterprise outside South Africa to the extent that such holding, acquisition or merger with another enterprise outside South Africa has an effect on an investment in South Africa.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

- It is understood that there is compliance by the South African government given that a stabilisation agreement is a legally binding document. Consequently, the South African government is typically expected to adhere to its terms as part of their contractual obligations.
- Further to the above, South Africa has a strong rule of law with justiciable rights with courts that enforce these rights. Additionally, South African courts are independent and, in this regard, there have been many instances in the past where the South African government has been found to have contravened either an agreement or law.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

- There are common issues such as -
  - o contractual terms in stabilisation agreements in that the stabilisation agreements must reflect provisions that protect the interests of investors;
  - o changes in the political climate in South Africa in that political instability can lead to a lack of commitment to, for example, upholding and enforcing a stabilisation agreement;
  - o ensuring that stabilisation agreements are compliant with local laws; and
  - o the PIA which regulates the protection of investments in South Africa. However, although the stated purpose of the PIA is to protect foreign investors in South Africa, overall, the protections offered in the PIA are substantially diminished when compared to the substantive standards contained in international treaties.

DISPUTES

Are there any statutorily prescribed procedures for the resolution of disputes?

- The MPRDA, the main oil and gas law, does not set out procedures for the resolution of disputes.
- However, section 13 of the PIA sets out the dispute resolution process to be followed by an aggrieved investor and emphasises the need to exhaust domestic remedies. Its main features are:
  - o Within six months of becoming aware of a dispute in respect of an action taken by the South African government that has affected that investor's investment, an affected investor may approach the Department of Trade and Industry ("**dtic**") to appoint a mediator to resolve the dispute.
  - o The dtic must maintain a list of qualified mediators of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment and who are willing and able to serve as mediators.
  - o The mediator must be appointed by agreement between the government and the foreign investor from the list maintained by the dtic, failing which, by agreement between the dtic and the foreign investor. In the event of the dtic being a party to the dispute, a joint request by the parties must be made to the Judge President of one of the divisions of the High Court to appoint a mediator.
  - o Importantly, and subject to applicable legislation, an investor, on becoming aware of a dispute, is not precluded from approaching any competent court, independent tribunal or statutory body in South Africa for the resolution of a dispute relating to an investment.
  - o Provided domestic remedies have been exhausted, the South African government may consent to international arbitration between South Africa and the home state of the affected investor.

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

- Many agreements in the oil and gas sector often include arbitration clauses for dispute resolution. These clauses typically stipulate that disputes will be resolved through arbitration rather than court litigation.
- Notwithstanding this, the ordinary courts of South Africa can still be approached by parties for relief in the event of a dispute.

TANZANIA
FB ATTORNEYS

FIRM INFORMATION

Website address : www.fbattorneys.co.tz
Languages spoken : English, Kiswahili
Telephone : +255788 646 651
Address : 8th Floor Amani Place, Ohio Street, Dar es Salaam
Contact : Dr Theophil Romward and Alyshah Bharwani
Email : trowmward@fbattorneys.co.tz / abharwani@fbattorneys.co.tz

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

The following laws regulate the oil and gas sector:
(i) The Petroleum Act, Act No. 21 of 2015;
(ii) Natural Wealth and Resources (Permanent Sovereignty) Act 2017, Act No. 5 of 2017;
(iii) Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act 2017, Act No. 6 of 2017;
(iv) Tanzania Extractive Industries (Transparency and Accountability) Act 2015, Act No. 23 of 2015;
(v) The Oil and Gas Revenue Management Act, 2015, Act No. 22 of 2015;
(vi) the Energy and Water Utilities Regulatory Authority Act, Cap.414; and
(vii) Subsidiary Legislation made under these laws.

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

(A) The Petroleum Upstream Regulatory Authority (PURA) which regulates the upstream petroleum operations. PURA's functions are:

- Advising the Minister on the promotion and bidding process of the production sharing agreements (PSAs) or other contractual arrangements; the negotiation of PSAs and other contractual arrangements; granting, renewing, suspending and cancelling of petroleum exploration licence, development licence and production permit;
- Advising the Government on tail end plan and decommissioning of installations submitted by a licence holder;
- Conducting or cause to be conducted reconnaissance surveys and evaluating prospectivity of frontier areas;
- Monitoring, regulating and supervising of the petroleum subsector;
- Analyzing, disseminating and issuing information relating to petroleum industry, including proposed exploration activities contained in the annual work programme, appraisal programme and production forecasts submitted by a licence holder;
- Reviewing and approving budgets submitted by a licence holder;
- Promoting local content including supporting national enterprises and Tanzanians to participate in the petroleum upstream industry;
- Receiving and processing application for granting, renewing, suspending and cancelling of exploration licence, development licence and production permit;
- Monitoring performance of petroleum projects and programmes;
- Monitoring all phases of petroleum discovery, evaluation and delineation, commercial evaluation of discovery, reservoir performance and production to ensure optimal rates for the discovery, commercialisation and recovery of petroleum resources using the best available technologies and field practices;
- Monitoring and evaluating performance in petroleum activities including investment, cost of services, regularity of outputs and availability of crude oil and natural gas for domestic supply;

Ensuring compliance by industry players to the provisions of this Act and imposing sanctions for non-compliance or other violation of regulations, orders, rules or contract terms;
- Ascertaining the cost of oil and gas due to licence holder and other contractors;

(B) Energy and Water Utilities Regulatory Authority (EWURA) which regulates the midstream and downstream petroleum operations. EWURA's functions are:

- Issuing, renewing, suspending or cancelling construction approvals and operational licences;
- Monitoring petroleum quality and standards;
- Initiating and conducting investigations in relating to technical, economic and safety issues in the delivery of service to consumers;
- Giving any necessary directions to any person granted a licence or approval;
- Charging and collecting fees and levies for petroleum sector;
- Approving applications for tariffs and prices;
- Prescribing technical, economic and safety standards of services;
- Monitoring environmental and safety impacts in the petroleum services;
- Promoting (a) access and affordability of gas services; (b) least-cost investment and security of supply for benefit of customers; (c) improvements in the operational and economic efficiency of petroleum industry and efficiency in the use of gas; (d) appropriate standards of quality, reliability and affordability of petroleum; (e) health and safety in the working environment of persons employed in the petroleum industry; (f) the use of local goods and services produced and provided in Tanzania; (g) maximum participation of Tanzanians in every part of the petroleum value chain; (h) efficiency, economy and safety in gas activities; and (i) competition in petroleum activities in areas open for investments; and
- Evaluating and monitoring impact of activities of the petroleum industry on the environment.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

The people of the United Republic of Tanzania collectively.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

A. Exploration Rights

- A holder of exploration licence has an exclusive right to explore petroleum in the exploration area, to carry out operations and execute works as he considers necessary.
- The holder may assign the contractor exclusive rights to conduct exploration activities in the contract area, except where joint operations have been established in the agreement;
- Upon assignment of rights, the contractor acquires exclusive right to conduct petroleum operations in the contract area on behalf of the licence holder.

B. Development Rights

- Carrying on exploration operations in the development area;
- Carrying on development operations in the development area;
- Selling or otherwise disposing of petroleum recovered; and
- Carrying on operations and executing works in the development area as necessary for or in connection with any matter referred to under (i), (ii) and (iii) above.

C. Who Qualifies to Acquire such Rights

- The National Oil Company (NOC) has exclusive right over all petroleum rights granted under the Petroleum Act from the Minister for Energy.
- Upon acquisition of such rights, the NOC may enter into partnership with a Tanzanian or a foreign entity through an open tendering process or a direct award of a block.
- Under the licence, the NOC is required to maintain a participating interest of not less than 25% unless then it decides otherwise.
- A company wishing to carry out petroleum operations in Tanzania, outside the scope of a reconnaissance permit, should do so together with the NOC.
- A person is qualified to enter into partnership with the NOC if:
  a) is a body corporate registered under the Companies Act, Cap. 212 or any other written law; and
  b) such entity is of recognized capacity, technical knowledge and financial capability.

Please provide an overview of the procedure for obtaining such exploration and production rights.

- Generally, under the Natural Wealth and Resources (Permanent Sovereignty) Act and the Petroleum Act, natural resources, petroleum resources in particular, belong to the people of the United Republic. However, the resources ownership and control is exercised by, and through, the Government on behalf of the people. In doing so, the Government can authorise any person to perform any function or undertaking relating to the exploration of natural wealth and resources as per the laws of Tanzania.
- The Minister for Energy has the mandate to enter into various agreements, such as Production Sharing Agreements (PSAs) in the upstream subsector and Host Government Agreements (HGAs) or any other agreements in the midstream subsector, with a view to providing basis for investment in the industry. As such, a potential investor engages with the Minister in negotiations which ultimately lead to conclusion and signing of agreements for petroleum operations.
- From the agreements, the NOC applies for the relevant licence from the Minister on behalf of the contractor/ investor.

Based on the above, obtaining exploration and production rights in oil and gas in Tanzania begins with engagement in negotiations with the Minister for Energy. Upon signing the agreement, whether directly or through a tendering process, other regulatory requirements including licensing, approvals, consents and permits will follow.

Are there any fees and charges applicable to obtaining these rights?

As explained above, it is the NOC that applies for exploration and production rights. Thereafter, the NOC concludes agreements with the contractors, that is, beneficiaries of the exploration and production rights. The only charges applicable in this process on the part of the contractors are production bonuses payable to the NOC on commencement of production and signature bonus, a single non- recoverable lump sum payment, upon signing of agreement or any other related agreement. Other relevant fees, if any, are contractual and are, therefore, provided for under the PSA.

What is the duration of the exploration and production rights?

- The exploration licence is valid for a period not exceeding 4 years commencing from the date on which the licence is granted, subject to two renewals of three and two years, respectively.
- The development licence is valid for a period not exceeding 25 years commencing on, and including the date on which the licence is granted, subject to a single renewal of not more than 20 years.

Are the exploration and production rights renewable? What are the renewal processes?

Yes, both rights are renewable.

A. Renewal Process of Exploration Rights

- The holder of an exploration licence wishing to have her licence renewed applies for the extension of the licence in respect of any block in the exploration area.
- An application may be made twice in respect of the extension of an exploration licence, and it should be made not later than 90 days before the day the licence expires;
- An application should be accompanied by:
  - o particulars of the work carried out in, and the amount expended in respect of the exploration area during the term of the licence and including the date of application or where the application is for a second extension of the licence, during the period of the first extension of the licence and including the date of the application; and
  - o adequate proposals of the applicant for work and minimum expenditure in respect of the block identified in the application during the extension period applied for.
- Upon the advice of PURA, the Minister grants an extension of the licence.
- The renewal application may be refused if:
  - o the holder of the licence is in default unless, as per the Minister, there are special circumstances justifying extension despite the default; or
  - o the proposal with respect to work and expenditure during the extension which accompanies the application is not adequate.

B. Renewable Process of Production Rights

- The holder of a development licence wishing her licence to be renewed applies to the Minister for an extension of the licence.
- An application may be made once in respect of any extension of the development licence, and it should be made not later than 12 months before the day on which the licence is due to expire.
- An application is accompanied by particulars of:
  - o work carried out, petroleum recovered and amounts expended and received in respect of the development area up to and including a date, not earlier than one month proceeding the date of application; and
  - o proposals of the applicant for work and expenditure in respect of the development area during the extension period applied for.
- The Minister is required to grant an extension of the licence upon advice by PURA and approval by the Cabinet. An extension may be refused if the holder is in default unless the Minister discovers that special circumstances exist which justify the granting of the extension.
- A noteworthy aspect is that the Minister should not refuse to grant an extension of the licence:
  - (a) unless he has given to the applicant, a notice of his intention to do so by:
    - giving in the notice particulars of the ground for the intended refusal; and
    - stating a date before which the applicant may take appropriate action or make representations concerning that ground; and
  - (b) unless the applicant has not, before that date, remedied the default or, in a notice given to the Minister, made representations which, in the opinion of the Minister, remove the ground for the intended refusal.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

Yes, the state has interests in the exploration and production operations. The state is represented by the NOC in petroleum operations. For example, it is a legal requirement that the NOC, as the licence holder, is required to maintain a participating interest of not less than 25% unless it decides otherwise. It is for these interests, PSAs and other petroleum agreements are concluded between the NOC, The government of Tanzania and the relevant investor.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements with respect to the acquisition of exploration and production rights in your jurisdiction?

Regarding the structure of the contractor, there are no local participation requirements of any kind. Such a person should be a body corporate registered under the Companies Act or any other written law; and be of recognized capacity, technical knowledge and financial capability. However, as indicated earlier, the petroleum rights are issuable to the NOC on behalf of the contractor.
Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?
There are no specific or unique restrictions for foreign persons seeking to acquire exploration and productions rights in Tanzania's petroleum sector. However, generally, there are rules pertaining to establishing places of business in Tanzania for any foreign entity. The foreign entity should either incorporate a subsidiary company or register itself with the Registrar of Companies and be granted a certificate of compliance which signifies that such a foreign entity has complied with the laws of Tanzania.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

Yes, there are specific local content requirements.

- A licence holder, contractors and subcontractors are required to give preference to goods which are produced or available in Tanzania and services which are rendered by Tanzanian citizens or local companies.
- A licence holder and contractor are required to submit a comprehensive local content plan, which should include or reflect local content plans of its subcontractors or any other person engaged to undertake petroleum activity, to PURA for approval. This means a subcontractor or any other person should, before engaging in a petroleum activity, prepare and submit a local content plan to the contractor, which should be subject to further verification by PURA. Further, a contractor and licence holder are required to

submit to PURA a local content plan which corresponds with a work programme to undertake petroleum activities.

- The submitted local content plan should detail the following:
  - o Employment and training;
  - o Succession plan, where applicable;
  - o Research, development and innovation;
  - o Procurement of goods and services;
  - o Technology transfer;
  - o Legal services;
  - o Engineering services;
  - o Financial services;
  - o Insurance services; and
  - o Any other details which the Authority deems fit.
- Within 60 days of the beginning of each calendar year, a licence holder and contractors are required to submit to PURA an annual local content performance report covering all its projects and activities for the year under review.
- The submitted report should:
  - o specify by category of expenditure the local content on both current and cumulative cost basis;
  - o indicate the employment achievement in terms of hours worked by Tanzanians and foreigners as well as their job positions;
  - o indicate the training, research, R&D, innovation, industrial and technology transfer availed to Tanzanians;
  - o indicate the actual procurement of goods, works and services executed
  - o indicate changes of the implementation of the approved local content plan and reasons thereof; and
  - o provide any other information as PURA may require.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions, if any, for the transfer or assignment of exploration and production rights? What fees, taxes, or other charges apply to such transfers?

Transfer of a licence or interests in a licence is subject to the approval of the Minister for Energy. Specifically, the Minister approves an instrument by which a legal or equitable interest in, or affecting a licence is created, assigned, effected or dealt with, whether directly or indirectly, otherwise the transfer or the instrument in so far as it operates, is of no effect.
Transfer of petroleum rights attracts taxes including income tax payable by way of single instalment (which is equivalent to capital gains tax), stamp duty and Value Added Tax.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

There are no specific requirements on change of control for entities holding exploration and production rights. The available notification requirements or restrictions apply generally to all entities as provided for under the anti-trust laws. Besides, underlying change of control of entities operating in Tanzania is treated as realisation of assets and liabilities and, therefore, subject to corporate income tax.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

- A transferee should not be a person disqualified from holding an interest in a licence under any provision of the Petroleum Act or any other applicable law;
- A transferor of an interest in a licence should ensure continuity of the petroleum operations under the licence until such operations are taken over by the transferee;
- A transferee should meet the technical and industrial qualifications required for petroleum operations; and
- A transferee should be financially capable of undertaking petroleum operations.

An application for approval should be accompanied by:

- An undertaking that the transferee is capable of discharging the obligations of the transferor;
- Certificate of incorporation or compliance by the transferee;
- Transfer agreements between transferee and transferor;
- Certificate of tax clearance from the Tanzania Revenue Authority;
- An integrity pledge by the transferee;
- Particulars of technical and industrial qualifications of the transferee and his employees;
- Particulars of the kinds of financial resources available to the transferee, including capital, credit facilities and guarantees so available;
- particulars of technical and industrial resources available to the applicant;
- Proposals with respect to the training and employment of Mainland Tanzanian; and any other matter as the Minister may consider necessary.

Are rights holders allowed to create security over their exploration and production rights?

Yes, the holder of a development licence is allowed to use the licence as security as part of financing of the activities associated with the production licence subject to consent from the Minister for Energy upon advice by PURA. However, the security is limited only to the licence holder's share or entitlement of the future revenue obtained from the production of petroleum as provided for in the agreement.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations?

Yes.

- The exploration licence is valid for a period not exceeding 4 years, with two possible extensions of 3 years for the first extension and 2 years for the second extension. The exploration licence can further be extended for three years in cases where petroleum is discovered within the period of 2 years before the date of expiration of an extended exploration licence.
- The development licence is valid for a period not exceeding 25 years, with one possible extension for a period not exceeding 20 years, making a total of 45 years.

Are there any compulsory relinquishment requirements?

Yes. The applicant of an exploration licence extension is required to relinquish one half of the number of blocks in respect of each extension sought. The area to be relinquished should be contiguous and compact and of the size and shape that permit effective conduct of the petroleum activities in the relinquished area unless otherwise determined by the Minister after consultation with PURA.

What are the conditions for transitioning from exploration to development and production?

Transitioning from exploration to the development and production stage presupposes the discovery of crude or natural gas. The holder of an exploration licence applies for a development licence upon satisfying the Minister that the block contains a petroleum reservoir or part of a petroleum reservoir.
A person who is not a holder of an exploration licence in respect of a block may also apply for a development licence in respect of a block if he satisfies the Minister that the block:
- contains a petroleum reservoir or part of a petroleum reservoir; and
- is not a block in respect of which the exploration licence or a development licence is in force at the time of the application.

What are the conditions for commencement of production operations?

Prior to commencing production by contractors, the holder of an exploration licence should have applied and obtained a development licence; developed the blocks; and paid the government dues as agreed under the PSA.
It is also noteworthy that upon the advice of PURA, the Minister:
- before or during the grant of a development licence, approves the production schedule contained in the development plan and issues an annual production permit to the licence holder;
- may, upon application from the licence holder, approve for a fixed period of time, the quantity of petroleum which may be produced or injected at all times;
- may stipulate that production be increased or reduced in relation to the approved production plan and apportion the increase or reduction proportionately between relevant reservoirs and give special consideration to long-term agreements for the supply of petroleum;
- upon application made by the licence holder, approves test production of a reservoir, duration, quantity and other conditions for test production; and
- requires a licence holder to produce a report on field related matters, including alternative schemes for production, if applicable, injection and total recovery factor for various petroleum production schedules.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions when it comes to processing and refining oil and gas produced in your jurisdiction?

Refining and processing of oil and gas, as part of midstream activities, are regulated by the Energy and Water Utilities Regulatory Authority (EWURA). Such activities require a licence from EWURA.
In deciding to grant the processing licence, EWURA takes into consideration, among others, if the applicant has:
- taken into account:
  (i) future development of the gas industry and its potential for competition;
  (ii health and safety requirements;
  (iii) security requirements;
  (iv) handling of hazardous substances;
  (v) environmental requirements;
- sufficiently demonstrated assessment and accommodation of potential future market developments in the application for a licence; and
- declared during the application that a gas processing facility shall be located onshore.

What are the requirements and restrictions for the export of oil and gas produced in your jurisdiction? Please specify any applicable domestic supply requirements.

A person intending to export natural gas should, in writing, apply to EWURA for approval. EWURA issues an approval upon consultation with other relevant authorities. Approval for the export of natural gas is granted for a specific facility and a defined capacity. Under the Petroleum (Refinery Operations) Rules of 2018, the exportation of oil and gas is a regulated activity which requires a licence from EWURA. An applicant for natural gas export approval should have a licence for a regulated activity, that is, an activity which includes any activity reasonably required in connection with the procurement and refining of feedstock, the sale of a petroleum product to a trader, wholesaler or Government institution in bulk quantity or for export to any foreign country.
An application for approval from EWURA should be accompanied by, among others,:
- proof of financial capability including financing plan to carry out the activity;
- proof of technical capability to carry out the activity;
- details of the shareholders of the applicant;

- certified copy of the tax identification number certificate
- a duly signed integrity pledge in accordance with applicable law;
- an environmental and social impact assessment certificate; and
- details of the destination of natural gas for export.

Regarding the domestic supply obligations:
- The Petroleum Act requires the Minister for Energy to ensure that there is a balance between petroleum domestic supply and export. In this regard, among the conditions of a development licence is to require the holder to supply petroleum to meet the domestic needs of Tanzania.
- Besides, the licence holder and contractor are obliged to satisfy the domestic market in Tanzania from their proportional share of production. As such, the volume of crude oil or natural gas which is required to be sold should meet the requirements of the domestic market not exceeding the share of profit oil or gas of a licence holder and contractor. It should be noted that the volume of crude oil or natural gas which the licence holder and contractor are required to supply should meet the domestic market obligation determined by the parties in the mutual agreement and on pro rata basis with other producers in Mainland Tanzania.
- A noteworthy aspect is that in the case where there is a shortfall in domestic gas commodities or petroleum products supplies or delivery, the Minister for Energy may direct a licensee to make supplies or deliveries from a licensee's facility to cover for such shortfall of gas commodities or petroleum products and may further direct on whom such gas commodities or petroleum products shall be delivered.
- Furthermore, in the event of war or an emergency affecting energy supplies, the Minister may require the licence holder or contractor to supply all or part of the quantity of petroleum produced at the prevailing market price to the Government of Tanzania or any Government agency. If the Minister so requires, he should give the licensee notice prescribing the time which the delivery is to be made.

SERVICES INDUSTRY

Is there a viable and competitive oil and gas services industry in your jurisdiction?

Yes, the law creates a regime for service providers to the petroleum subsector. PURA, for example, is required to exercise and perform its functions and powers in a manner that promotes efficiency, economy and safety on the part of licence holder, Contractor and sub-contractors on the safe conduct of petroleum operations. Further, the local content regime creates a framework that allows both local and international sub-contractors to provide services to the Tanzanian petroleum industry. There are various subcontractors providing services to Contractors in the oil and gas sector.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

- As it is for other companies, oil and gas service companies establish their places of business in the country either by registration and obtaining a certificate of compliance from the Registrar of Companies or by incorporating a subsidiary and obtaining a certificate of incorporation; obtain Tax Identification Number (TIN), Value Added Tax Registration Number (VRN) and Tax Clearance Certificate from the Tanzania Revenue Authority; and a business licence from the Registrar of Companies.
- In the case where goods and services required by the contactor, subcontractor or licence holder are not available in Tanzania, such goods and services should be provided by a company which has entered into a joint venture with a local company, with the local company owning at least 25% in the joint venture. The local company referred to here is the company incorporated under the Companies Act, which is 100% owned by Tanzanians or a company which is in a joint venture with Tanzanians whose participating share is not less than 15%.
- If this arrangement cannot be achieved, a foreign entity which intends to provide goods, works or services to a licence holder and contractor within the country should, subject to PURA's approval, enter into any other business arrangement which will guarantee a local participation of at least 10% shares, interest or equity of the contract value for the provisions of the works, goods and services.
- Further, if the joint venture and other business arrangements cannot be achieved, upon application by the licence holder or contractor, PURA grants approval for the said applicant to source such works, goods and services through any other arrangement which will provide the local company with a transfer of competence and technology.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies?

As we indicated earlier under part 3 above, a licence holder, contractors and subcontractors are required to give preference to goods which are produced or available in Tanzania and services which are rendered by Tanzanian citizens or Local Companies; employ Tanzanians and implement a succession plan by which Tanzanians progressively replace the foreign expatriates.

ENVIRONMENTAL

What environmental approvals and obligations apply to oil and gas operations in your jurisdiction?

- Generally, under the Petroleum Act, any person undertaking an upstream activity is required to comply with environmental principles as provided for under the Environmental Management Act and other relevant

laws. One of the requirements under the Environmental Management Act is conducting an Environmental Impact Assessment and obtaining an Environmental Impact Assessment Certificate from the Minister for Environmental upon recommendation by the National Environmental Management Council (NEMC).
- The management of production, transportation, storage, treatment and disposal of waste arising out of petroleum operations should be carried out in accordance with such environmental principles and safeguards.
- It is also a requirement for licence holders to contract separate and competent entities to manage transportation, storage, treatment or disposal of waste arising out of petroleum operations.

Are there any consequences of a breach of environmental obligations for the rights holder?

- Failure to comply with environmental protection standards is punishable on conviction by a fine of not less than TZS 500,000 but not exceeding 10 million.
- Managing transportation, storage, treatment or disposal of waste arising out of petroleum operations by the persons contracted by a licence holder without a licence issued by the Minister for Environment is an offence and could on conviction result in a fine of not less than TZS. 5, 000,000 or imprisonment for a term of not less than six months or both.
- Besides, a licence holder and contractors are liable for pollution damage without regard to fault. The liability may, however, be reduced to a reasonable extent in case of an inevitable event of nature, act of war, exercise of relevant authority or a similar force majeure event that has contributed to a considerable degree to the damage or its extent under circumstances which are beyond the control of the licence holder or contractor.
- In reducing the liability, scope of the activity; situation of the party that has sustained the damage; and opportunity for taking out insurance on both sides should be considered.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

- Where a body corporate commits an offence under the Environmental Management Act, every director or partner and any other person concerned in the management of that body corporate commits the offence unless that person proves that:
  - o the offence was committed without his consent or connivance; and
  - o the person exercised all such diligence to prevent the commission of that offence.
- This implies that every director or partner and any other person concerned in the management of a body corporate holding a licence should take all reasonable steps to prevent commission of an offence by that body corporate.
- Regarding pollution under the Petroleum Act, the liability for pollution leads to the payment of damages and these damages cannot be claimed against any person other than the licence holder or contractor who undertakes to take measures to avert, limit pollution, save a life, or rescue values endangered in conducting mining operations. Also, the liability cannot be claimed against any person employed by the right holder.
- Where the licence holder and contractor fail to pay compensation per the Court order, the decree-holder may commence an action against a person responsible for the damage to the same extent as the licence holder and contractor may do against such a responsible person.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Yes.
- Petroleum activities should be conducted in such a manner to enable a high level of safety to be maintained and further developed in accordance with technological developments, best petroleum industry practices, and the Occupational, Health and Safety Act (OSH Act).
- The OSH Act contains health and welfare provisions which require employers to make the work places have supply of drinking water, suitable sanitary conveniences, washing facilities, accommodation for clothing, first aid and sitting facilities.
- Under the Petroleum Act, a licence holder and contactors are required to:
  - o establish, implement, follow up and develop an appropriate management system designed to ensure systematic and continuous compliance with all applicable requirements for health, safety and the working environment;
  - o identify hazards and evaluate risks associated with any work performed in the course of petroleum activities carried out under the licence which constitute a hazard to health of persons employed for the purposes of that work;
  - o prevent the exposure to the hazards;
  - o develop and submit plan indicating prevention, handling and mitigation measure on HIV/AIDS and other transmittable and communicable diseases in the areas of licence operations; and
  - o maintain efficient emergency preparedness for accidents and emergencies which may lead to loss of life, injury, pollution or major damage to property.

In case an accident or an emergency occurs, the licence holder or other responsible person responsible should suspend the petroleum activities. In some circumstances, the Minister may impose conditions to allow continuation of activities.

Which entity is responsible for the enforcement of health and safety regulations or obligations?

Generally, it is Occupational Safety and Health Authority (OSHA), and specifically to the oil and gas sector, EWURA and PURA also play a role in ensuring health and safety in the oil and gas operations.

Are there any consequences of a breach of these requirements for the rights holder?

Failure to comply with the mandatory requirements of the OSH Act could result in the imposition of a fine of not less than TZS 5, 000, 000, or to imprisonment for a term not exceeding six months, or to both.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

Where an offence under OSH Act is committed by a company, and it is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of, any chairman, director, manager, secretary or other officer of the company that chairman, director, manager, secretary or other officer is deemed to have committed an offence and is liable to be proceeded against. This implies that it should be proved that chairman, director, manager, secretary or other officer consented or connived or facilitated by the commission of the offence.

DECOMMISSIONING

What are the decommissioning and abandonment requirements and obligations for oil and gas rights holders in your jurisdiction?

(i) Decommissioning Plan
- Submission of a decommissioning plan to the relevant Authorities (PURA and EWURA) by the licence holder/ licensee, respectively.
- It contains proposals for continued production or shut down of production, decommissioning of facilities and any other information.
- It may also address further use of the facilities in petroleum activities or other uses; complete or partial removal or abandonment.
- And any other information as requested by the relevant Authorities.

(ii) Decommissioning Fund
- It is established in respect of each development area or other facilities operated in relation to a licence or permit for purposes of meeting costs related to the implementation of the plan.
- Amounts in the decommissioning Fund are treated as operating costs, thus recoverable in accordance with the Agreement or Regulations.
- The licence holder/licensee covers the decommissioning expenses in case the deposited amounts are not sufficient to implement the plan.
- Whatever amount that remains in the Fund accrues to the Government and remains for decommissioning purposes.
- The Fund is managed by the committee consisting of the relevant Authorities, the licence holder/licensee and sometimes the owner of the facilities.
- Disposal of decommissioned facilities depends on the directions issued by the Authorities.

(iii) Removal of Property
- The licence holder's duty, subject to the Minister's directions,
  - o to remove from the area all properties brought into that area by any person engaged or concerned in the petroleum activities in case a licence is surrendered or has expired, or is no longer part of the licensed area.
  - o plug or close off all wells drilled in that area by any person engaged or concerned in those operations;

Are there any particular events or timelines that trigger decommissioning obligations?

- At least five years before a licensed facility terminates permanently unless the Authorities direct otherwise, the licence holder is required to submit a Decommissioning Plan.
- The law provides for the timing of effecting payments into the Fund, i.e.,
  - (i) from the calendar quarter in which the petroleum production has reached 50% of the aggregate recoverable reserves; or
  - (ii) five years after commencement of production; or
  - (iii) on notice of surrender, whichever comes first.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

Taxes that are levied on other businesses do apply to oil and gas businesses. There is no industry-specific legislation addressing taxation of oil and gas. Applicable taxes include:
- Corporate income tax at a rate of 30%;
- Withholding tax on payments made in respect of dividends at a rate of 10%; payment of interest at a rate of 10%; payment of management service fees at a rate of 5% for non-residents; and local consultancy and professional services at 5%;
- Value Added Tax at a rate of 18%;
- Stamp duties at fixed rates depending on the type of dutiable document and ad valorem rates which range between 0.5% and 1%; and
- Service Levy at a rate of 0.3% on the gross turnover payable to a specific municipality within which the oil and gas entity is operating.

Besides, royalty is another fiscal tool applicable to the oil and gas industry. Royalty is payable out of gross production in respect of petroleum produced from the Contract Area at a rate 12.5% for onshore/shelf areas and 7.5% for offshore of total crude oil/natural gas production prior to cost oil and or cost gas recovery.

Are there any tax incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

- Specifically, machinery and inputs, excluding motor vehicles, imported by a licensed company for direct and exclusive use in oil, gas or geothermal exploration, development and distribution upon recommendation by a competent authority of a Partner State are exempt from import duties chargeable under the East African Community Customs Management Act, 2004 (ECCMA).
- Besides, import of goods by a registered and licensed explorer or prospector for the exclusive use in oil and gas to the extent that those goods are eligible for relief from customs duties under the ECCMA are exempt from VAT.
- For income tax purposes, any company may benefit from a reduced corporate tax rate of 25% (from 30%) for three consecutive years if:
  - it is listed on the Dar es Salaam Stock Exchange; and
  - more than 30% of its equity is issued to the public.
- Other than statutorily provided exemptions, other exemptions/incentives are granted on negotiated terms under various agreements, PSAs in particular.

What is the procedure for obtaining any applicable incentives and exemptions?

- Ordinarily, tax exemptions that are provided under agreements, such as PSAs, need to be perfected or validated by requesting an official document from the relevant Authority for that purpose. Specifically, all exemptions under the Income Tax Act, Excise (Management and Tariff) Act and Stamp Duty Act are perfected by the Government Notice published by the Minister for Finance in the Government Gazette. This is the practice which has a judicial blessing. With other tax exemptions such as VAT, the investor requests the certificate of exemption from the Commissioner General of Tanzania Revenue Authority subject to submitting the agreement by which the Government of Tanzania grants such exemptions. Further with exemptions that are statutorily provided, the investor notifies the Commissioner General of the Tanzania Revenue Authority through the respective government institution such as the NOC for purposes of clearance upon importation of the goods for exempted activities.
- It should be noted that import duty exemptions that are not statutorily provided under the ECCMA fall under the mandate of the Council of Ministers of the East African Community (EAC). Thus, the Government of Tanzania agreeing to provide some exemptions from import duties requires further approval from the EAC's organs, which involves a somewhat lengthy process and procedures and may take time to accomplish. Thus, the request for an official document to perfect the exemptions is submitted to the Ministry of Finance through the Ministry of Energy, as the host Ministry. The Ministry of Finance then forwards the request internally to the Ministry of Foreign Affairs through which other actions within the EAC can be undertaken.

STABILISATION RIGHTS

Are there any forms of stabilization rights granted to investors in the oil and gas sector?

Yes, the PSAs, HGAs and other forms of agreements concluded by the Government of Tanzania, the NOC and contractors do provide for change of law clauses which stabilise the legal framework as at the time of signing such agreements for purposes of ensuring economic stability for investors in the extractive sector.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

There is no threshold for stabilisation purposes.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

Although some of the laws may require certain compliance with new laws such as registration of the agreements concluded under the repealed laws (stabilised laws), generally, the clauses are complied with. Such a registration requirement is only for monitoring purposes.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

There are some stabilisation clauses that have been subject of proceedings in tax courts, in particular, the applicable tax rates for interpretation purposes. Other than this, there are no issues.

DISPUTES

Are there legally prescribed procedures for dispute resolution?

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

- PURA is mandated to inquire and decide all disputes between a person engaged in exploration or development operations, either among themselves or in relation to themselves and third parties other than the Government, in relation to:
  - the boundaries of any exploration area or development area;
  - any act committed or omitted, or alleged to have been committed or omitted, in the course of, or ancillary to, exploration or development operations;
  - the assessment and payment of compensation under the Petroleum Act; or

  - o any other matters in relation to exploration and development operations.
- In the case where PURA refuses to decide any dispute referred to it, it should notify the parties to the dispute in writing accordingly, and there is no appeal that lies to a court against PURA's refusal.
- In the case PURA decides the dispute, it may send a copy, certified under its hand, to the court within the local limits of whose jurisdiction the subject-matter of the decree or order is situated for purposes of enforcing PURA's decree or order in the same manner in which it enforce its own decrees or orders.
- An aggrieved party may appeal to the Fair Competition Tribunal. It should be noted that no one is allowed to commence proceedings in court in relation to disputes that fall within PURA's jurisdiction as mentioned above.
- With the disputes that fall outside PURA's jurisdiction, it is upon the parties to choose the forum of dispute resolution. Ordinarily, the parties agree under the agreements as to which mode of dispute resolution and the law applicable in resolution of such disputes, which may either be through courts or arbitration.
- Note further that with the coming into force of the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017, all disputes relating to permanent sovereignty over natural resources are not a subject of proceedings in any foreign court or tribunal. For purposes of implementing this provision, all disputes arising from extraction, exploitation or acquisition and use of natural wealth and resources should be adjudicated by judicial bodies or other organs in Tanzania and in accordance with the laws of Tanzania.
- Since 2017, we are not aware of any dispute involving permanent sovereignty over natural resources where this requirement has been put to test. We are aware of various arbitration proceedings involving the government that have been conducted before the foreign arbitral tribunals in accordance with the agreements between the Government of Tanzania and investors. Given that this requirement came while there are existing contractual commitments between the government and private entities, such contractual commitments are subject to renegotiation under the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act, 2017.

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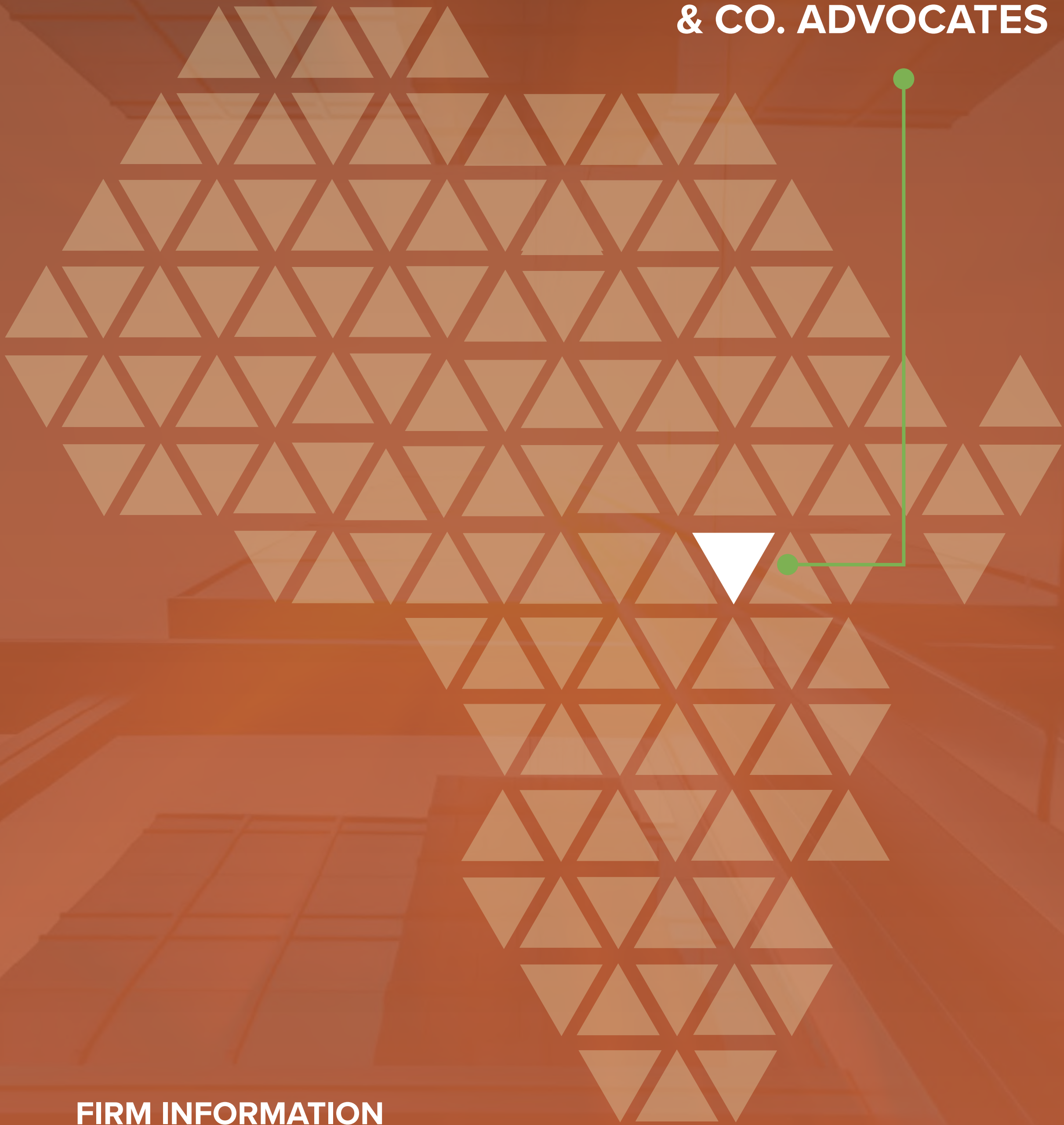

FIRM INFORMATION

Website address : **www.kats.co.ug**
Languages spoken : **English**
Telephone : +256 414233770
Address : Plot 20, Kampala Road. 2nd Floor, Radiant House.
Contact : Sim Katende
Email : sim@kats.co.ug

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

There are various legislations that govern the oil and gas sector in Uganda. Below is a summary of the key laws:

The Constitution of the Republic of Uganda, 1995 as amended
The Constitution vests powers in the Parliament of Uganda to make laws regulating the exploitation of minerals, sharing of royalties arising from the mineral exploitation, the conditions of payment of indemnities arising out of exploitation of minerals and conditions regarding the restoration of derelict land. The Constitution further provides that all minerals are held by the government on behalf of the people of Uganda.

The Petroleum (Exploration, Development and Production) Act, 2013 (the "Upstream Act")
The Upstream Act provides for regulation of petroleum exploration, development and production activities. The Upstream Act establishes the Petroleum Authority of Uganda, provides for the establishment of the National Oil Company. In addition, the Upstream Act regulates the licensing and participation of commercial entities in petroleum activities, and provides for an open, transparent and competitive process for licensing. It also provides for the cessation of petroleum activities and decommissioning of infrastructure, payments arising from petroleum activities, and lays down conditions for the restoration of derelict lands.

The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 (the "Midstream Act")
The Midstream Act establishes the legal framework that governs midstream operations in Uganda. It provides for the regulation, management, coordination and monitoring of midstream operations, regulates the construction, placement and ownership of facilities and provides for third party access to the facilities. In addition, the Midstream Act provides for the regulation of tariffs for facilities, provides for an open, transparent and competitive process for licensing. The Midstream Act also creates additional safety and environmental regulations that are not sufficiently regulated in other laws.

The Petroleum Supply Act, 2003 (the "Downstream Act")
The Downstream Act provides for the supervision and monitoring, importation, exportation, transportation, processing, supply, storage, distribution and marketing of petroleum products. The Downstream Act establishes the Minister of Energy as the regulatory authority of the petroleum sector. The Downstream Act provides the legal framework for the licensing and control of activities and installations for the safety and protection of public health and environment in petroleum supply operations.

The East African Crude Oil Pipeline (EACOP) (Special Provisions) Act 2021 (the "EACOP Act")
The EACOP Act sets out the legal framework for the implementation of the East African Crude Oil Pipeline project in Uganda. It provides for the implementation of Uganda's obligations under the Intergovernmental Agreement and the Host Government Agreement and other related matters. The EACOP Act provides for important aspects related to the EACOP project such as the transportation tariff, security, labour standards, title to petroleum, land rights and national content requirements among others.

The Public Finance Management (Amendment) Act, 2021 (the "PFM Act")
The PFM Act amends the Public Finance Management Act 2015 to enable the Uganda National Oil Company to retain proceeds from the sale of petroleum arising from the state participating interest in the applicable petroleum agreements. The amendment to the principal Act was made to allow UNOC to meet its financial obligations and those of the state under the applicable petroleum agreements, Joint Operating Agreements as well as the East African Crude Oil Pipeline Project. The PFM Act also provides for the deposit by the National Oil Company of the balance from the proceeds retained into the Petroleum Fund and for the appropriation of funds to the National Oil Company for approved investments.

The Environment Act, 2019
The Environment Act governs and sets out provisions that guide activities of the oil and gas sector regarding the protection of the environment. The Environment Act makes it mandatory for persons that intend to conduct petroleum operations to carry out Environmental and Social Impact Assessments in accordance with the provisions of the Environment Act. The Environment Act also sets out the role of the regulator, the National Environment Management Authority.

In addition to the above legislation, there are several Regulations and Policies that assist in the implementation of the laws. These include the following;

i. The Petroleum (Exploration, Development and Production) Regulations, 2016
ii. The Petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations, 2016
iii. The Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016
iv. The Petroleum (Exploration, Development and Production) (Metering) Regulations, 2016
v. The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Regulations, 2016
vi. The Petroleum (Refining, Conversion, Transmission and Midstream Storage) (Health, Safety and Environment) Regulations, 2016

vii. The Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations, 2016
viii. The Petroleum (Waste Management) Regulations, 2019
ix. The National Oil and Gas Policy of 2008.
x. The Oil and Gas local content policy of 2018
xi. The Oil and Gas Revenue Management Policy for Uganda, 2012
xii. The Environment (Environment and Social Assessment) Regulations
xiii. The Environment (Waste Management) Regulations

The above are buttressed by statutes, regulations and guidelines on Tax, Environment, Wildlife, Water, and Land amongst others.

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

The National Oil and Gas Policy of 2008 sets out three bodies charged with the regulatory role in the Oil and Gas Sector. Firstly, the Ministry of Energy and Mineral Development (MOEMD) which operates through its Directorate of Petroleum to co-ordinate the development of the sector through policy making, investment promotion and licensing.

Secondly, The Petroleum Authority of Uganda (PAU) which is charged with the overall monitoring and regulatory role. The Authority regulates the different players in the oil and gas sector and also oversees the compliance and operation of oil companies.

Thirdly, the Uganda National Oil Company (UNOC). This is a separate commercial entity catering towards state participation in licensing that is mainly responsible for government's commercial interests in the sector.

In addition to the above bodies, the National Environmental Management Authority (NEMA) is responsible for the regulation and enforcement of environmental regulations. The Uganda Revenue Authority has oversight over the oil and gas sector specifically in relation to taxation. The regulatory oversight over petroleum revenues that accrue to Government is overseen by the Ministry of Finance and Planning which controls the Petroleum Fund.

In addition, Parliament has oversight over several oil and gas matters. For instance, under Section 6(3) of the Upstream Act, the Minister of Energy is required to lay before Parliament the model Production Sharing Agreements or any other model agreement approved by cabinet. There is no similar requirement to present executed PSAs before Parliament.

Under the Public Finance Management Act, the Minister of Energy is required to table before Parliament reports of the Petroleum fund indicating the estimated petroleum revenue for the financial year and also reports of the Petroleum Fund indicating the amount transferred to the Consolidated Fund.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

The Constitution of the Republic of Uganda, under Article 244 vests the ownership and control of minerals and petroleum in their natural condition in the Government on behalf of the citizens of Uganda. This is re-affirmed by S. 4 of the Upstream Act.

Legal and beneficial ownership of petroleum allocated to the government in an oil project may be owned by the Uganda National Oil Company (UNOC), a commercial entity wholly owned by the Government of Uganda. For instance, under Section 7 of the EACOP Act the state's 15% participating interest in the applicable petroleum agreements is vested in UNOC.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

Exploration and production rights are acquired through applying for and obtaining Petroleum exploration and petroleum production licences, and the execution of Production Sharing Agreements (PSAs).

Exploration licence; A Petroleum Exploration License (PEL) confers the exclusive right to explore for petroleum and to carry on any other activities necessary to achieve this purpose. The holder of an PEL who makes a discovery in their exploration area has exclusive rights to apply for a Petroleum Exploration License (PEL) to be granted to them over any block or blocks in that area provided the subject reservoirs were included in their application. The holder of an PEL is also required to execute PSAs. PSAs are signed contemporaneously with the issuance of the PEL and they provide a right to apply for PPL

Production licence; A PEL confers the right to carry on petroleum activities in the subject area and a right to sell /dispose of the licensee's share of the petroleum as well as carrying on operations and works necessary to execute the above. Under Section 73 of the Upstream Act, PELs are granted on the basis of;
a) Technical competence and capacity, experience and financial strength of the applicant;
b) The applicant's demonstrated understanding of the petroleum reservoir of the field;
c) Presentation of a detailed field development plan and petroleum reservoir report; and
d) Other conditions as determined by the Minister

Please provide an overview of the procedure for obtaining such exploration and production rights.

Exploration and Production rights are acquired separately through first obtaining a Petroleum PEL and PSA and thereafter a PPL.

For one to obtain a PEL, the Minister of Energy and Mineral Development is required to have announced areas open for bidding for an exploration license by publishing a notice in the Gazette or a newspaper of wide national and international circulation. Interested parties then apply in the prescribed form to the Minister in order to take part in a competitive bidding process where they go through pre-qualification, request for proposals, evaluation and finally an exploration license is awarded to the successful bidder. However, under certain exceptional circumstances, the Minister may receive direct applications for a PEL.

In order to obtain a PPL, the applicant shall make an application in the prescribed form to the Minister of Energy and Mineral Development, and this application shall be accompanied by a Petroleum Reservoir Report and a Field Development Plan.

Upon grant of a PPL, the licensee would also have to obtain an Annual Production Permit approving their production schedule for a particular year. This application is made in the prescribed form and accompanied by a report on field related matters including any alternative schemes of production.

Uganda has so far had two licensing rounds both of which were advertised by the Minister in the gazette and in the print media through open bidding.

The Government, through the Ministry of Energy and Mineral Development, has so far awarded nine PPL. One PPL was awarded for the Kingfisher field to China National Offshore Oil Company (CNOOC). In 2012, five other PPLs for the Mputa-Nzizi-Waraga, Kasamene-Wahrindi, Kigogole Ngara, Nsonga and Ngege fields were awarded to Tullow Uganda which later sold its assets to Total E&P. In 2016, three PPLs for Ngiri, Jobi-Rii, and Gunya fields were issued to Total.

In January 2023, after the second round of licensing, the government approved the grant of two Petroleum Exploration licenses to DGR Energy Turaco Uganda SMC Limited and the government-owned Uganda National Oil Company (UNOC) for the Turaco and Kasuruban exploration areas respectively.

Are there any fees and charges applicable to obtaining these rights?

Section 155 of the Upstream Act provides that the holder of a petroleum exploration or production licence shall pay annual fees in respect of the licence as may be prescribed by regulations. The annual fees are payable on the grant of a licence and annually thereafter on the anniversary of the grant until the termination of the licence. The annual fees payable cover acreage rental, including for stratigraphically delineated acreage where applicable and training and research fees. There are no regulations in force on the fees and charges applicable to obtaining petroleum rights and are set by PAU and the Ministry of Energy on a case-by-case basis. For instance, in the second licensing round, applicants were required to pay a non-refundable fee of USD 20,000.

In addition, a licensee is required to pay a signature bonus as may be prescribed by regulations upon the grant of a petroleum exploration or production licence. The Act defines "signature bonus" to mean a single, non-recoverable lump sum payment by the licensee to the Government upon the granting of the petroleum exploration or production licence. It is important to note that the regulations providing for the annual fees payable as well as the signature bonus are yet to be enacted

What is the duration of the exploration and production rights?

Exploration rights remain in force for the period specified in the exploration licence however this period cannot exceed two (2) years from the date of the grant of the licence. Production rights remain valid for twenty (20) years.

Are the exploration and production rights renewable? What are the renewal processes?

Both exploration and production rights are renewable. An application for renewal may be made in the prescribed form not later than 90 days before the expiry of the licence. With regard to an exploration licence, renewal may only be made in respect of one half of the number of blocks for which a licence was first granted or last renewed and the application shall be accompanied by the particulars of the work carried out, and the amount expended in respect of an exploration area during the term of the licence up to and including a date no earlier than two weeks prior to the date of the application, the applicant's proposals for minimum work programmes and expenditure in respect of the licenced area particularly the details of the work to be carried out in the first year of the renewal period being applied for.

Where it is a second renewal, the application should be made during the period of the first renewal up to and including a date no later than 14 days prior to the date of the application.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

Government's participation in the exploration, development and production oil is direct and may be through a license, contract or a joint venture granted under the Petroleum Exploration and Production Act. This is provided for in Section 124 of the Upstream Act which provides that Government may participate in petroleum activities through a specified participating interest of a license or contract granted under the Upstream Act and in the joint venture established by a joint operating agreement in accordance with the license The Upstream Act does not specify a threshold. However, under the current PSAs, the government has a participating interest of 15%, with the exception of the recently awarded Kasuraban PSA, in which the government through UNOC has 100% participating interest.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements with respect to the acquisition of exploration and production rights in your jurisdiction?

Section 6 of the Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016 (the "National Content Regulations") provides that the Minister shall consider national content when evaluating any applications for petroleum exploration, development and production license applications. However, there are no specific local participation requirements in relation to the acquisition of exploration and production rights in Uganda.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

Section 168 of the Upstream Act requires a licensee under the Upstream Act to maintain a company registered in Uganda which is authorised and capable of independently managing petroleum activities subject to Ugandan jurisdiction.

In addition, Regulation 14(6) of the Petroleum (Exploration Development and Production) Regulations, 2016 requires foreign companies seeking to acquire a petroleum exploration license to establish a place of business in Uganda and to be registered in accordance with the Companies Act, 2012.

Similarly, Regulation 20(6) of the Petroleum (Exploration Development and Production) Regulations, 2016 provides that a petroleum production license shall not be granted to a body corporate incorporated outside Uganda unless it has established a place of business in Uganda and is registered in accordance with the Companies Act, 2012.

Foreign companies can therefore choose to incorporate local companies or to register a branch in Uganda.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

Section 125 of the Upstream Act requires licensees, their contractors and sub-contractors to give preference to goods which are produced or available in Uganda and services which are rendered by Uganda citizens and companies. In addition, there is the National Content Regulations,.

Regulation 2 (2) of the National Content Regulations require every licensee, operator, contractor, sub-contractor and any other entity involved in petroleum activities in Uganda to incorporate and implement national content as an important element of their overall petroleum activities.

The regulations reserve the provision of specified goods and services for Uganda companies, citizens and registered entities. These include transportation, security, foods and beverages, hotel accommodation and catering, human resource management and locally available construction materials among others.

Both the Act and the Regulations stipulate that where the goods and services required by the contactor or licensee are not available in Uganda, they are to be provided by a company which has entered into a joint venture with a Ugandan company provided that the Ugandan company has a share capital of at least forty-eight percent in the joint venture.

Licensees are also required to report periodically within 60 days of the end of each calendar year to the Petroleum Authority of Uganda on their achievements and their contractors' and subcontractors' achievements in utilizing Ugandan goods and services during that calendar year.

In addition, licensees in all phases of petroleum activities (upstream, downstream and midstream) are all required to make provision for the recruitment and training of Ugandans. The program is required to take into account gender, equity, persons with disabilities and host communities. Host communities are the inhabitants of the district in which petroleum activities take place.

In addition, licensees are required under their respective licenses to make a commitment to maximise knowledge and skills transfer to Ugandans and to report to the PAU on a regular basis on their progress with these commitments. For instance, Section 126 (1) of the Upstream Act requires a licensee to within 12 months of the grant of the license and on each subsequent anniversary of the grant to submit to PAU for approval, a detailed program for the recruitment and training of Ugandans.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions, if any, for the transfer or assignment of exploration and production rights? What fees, taxes, or other charges apply to such transfers?

Under Section 87(1) of the Upstream Act, the written consent of the Minister of Energy and Mineral Development in consultation with the PAU is required before the transfer of a license. A licensee seeking to transfer its license is required to apply to the Minister for his or her consent and to fulfil financial obligations for the transfer.

In consideration of an application for the transfer of a license, the Minister is required to satisfy himself or herself of the legal and technical capacity, competence, and financial strength of the person to whom the license is to be transferred.

The Minister shall not unreasonably withhold consent to an application to transfer a licence unless he or she has reason to believe that the public interest or safety is likely to be prejudiced by the transfer.

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

There are restrictions on the change of control in entities holding exploration and production rights. Section 87 (5) of the Upstream Act provides that the restrictions to the transfer of a license under Section 87 (1) apply to the direct or indirect transfer of interest or participation in the license including the assignment of shareholdings and other ownership shares which may provide decisive control of a licensee possessing a participating interest in a license.

The Act defines 'control' to mean the possession, directly or indirectly, of the power to direct or cause the direction of the management by that person, whether through the ownership of shares, voting, securities, partnership or other ownership or participation interests, agreements or otherwise.

In addition, a licensee is required under Section 89GF (1) of the Income Tax Act to notify the Commissioner General of the Uganda Revenue Authority immediately after a change in the underlying ownership of a licensee.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

In consideration of an application for the transfer of a license, the Minister is required to satisfy himself of herself of the legal and technical capacity, competence, and financial strength of the person to whom the license is to be transferred. This consent is not to be unreasonably withheld.

Are rights holders allowed to create security over their exploration and production rights?

Section 128 of the Upstream Act permits the use of a production license by a licensee as security for the financing of activities associated with the production license in a manner prescribed by regulations. The security can only be in relation to the licensee's share or entitlement of the future revenue obtained from production of petroleum as provided for in their agreement.

There is no provision for the creation of security over exploration rights.
However, under Section 74 (1) of the PFM Act, it is prohibited for the financial assets of the Petroleum Fund including present or future financial assets to be earmarked, pledged, committed, loaned out, or otherwise encumbered by any person or entity.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations?

Section 61 of the Upstream Act stipulates that exploration rights remain in force for the period specified in the exploration licence however this period cannot exceed two (2) years from the date of the grant of the licence.

Are there any prescribed minimum work and expenditure obligations for exploration operations?

There are no prescribed minimum work and expenditure obligations for exploration operations. However, an applicant for an exploration license is required to disclose in their application the minimum work program and expenditure in respect of the block or block applied for.

Are there any compulsory relinquishment requirements?

Under the Upstream Act, the holder of an exploration license is required to relinquish part of the exploration area in two instances;

a) Where a licensee who makes a discovery of petroleum in an exploration area fails to within two years of the discovery draw up and carry out an appraisal program for the purpose of delineating the reservoir to which that discovery relates and;
b) At each application for renewal of an exploration license.

Section 66(2) of the Upstream Act requires a licensee who makes a discovery of petroleum in an exploration area to within two years of the discovery, take all steps that are reasonable in the circumstances of the discovery, to draw up and carry out an appraisal program for the purpose of delineating the reservoir to which that discovery relates in terms of thickness and lateral extent and estimating the quantity of recoverable petroleum in the reservoir. Where a licensee fails to comply with this requirement, the Minister may subject to any applicable terms and conditions in the petroleum agreement, by notice in writing to the licensee, direct that the discovery area in which that discovery is located ceases to form part of the petroleum exploration area.

Under Section 64(3) of the Upstream Act, an application for renewal of an exploration license may only be made in respect of one half of the number of blocks for which a licence was first granted or last renewed. Effectively, this means that a licensee must relinquish half of the exploration area granted under an Exploration License each time the exploration license is renewed.

What are the conditions for transitioning from exploration to development and production?

Under Section 69 of the Upstream Act, the holder of a petroleum exploration license who has made a discovery of petroleum in his or her exploration area has the exclusive right to apply for the grant of a petroleum production license over any block/blocks in that area which have following appraisal, been shown to contain a petroleum reservoir or part of a petroleum reservoir.

An application for a PPL must be made within 2 years after the date on which the technical evaluation of the test results are submitted to the Minister or within such longer period as the Minister may allow or as may be stipulated in the PSA.

Where the holder of an exploration license fails to apply for a PPL, the Minister may under Section 70 of the Upstream Act announce that such area is open for bidding for a PPL. The bidding under Section 70 is also open to persons who do not hold a PEL in respect of the exploration area.

An application for the grant of a PPL shall be accompanied by a report on the petroleum reservoir, a detailed field development plan and any relevant information that the Minister may reasonably require. An applicant for a PPL is prohibited from entering into any substantial contractual obligations or commencing construction work until a field development plan has been approved. It is the duty of the Petroleum Authority of Uganda to assess the field development plans and make recommendations to the Minister for approval, amendment or rejection of the plans. The development plan of an applicant is required to demonstrate that the applicant shall ensure the most efficient, beneficial and use of the petroleum resources concerned timely. The development plan must also take proper account of best petroleum industry practices and safety factors.

Under Section 72 (1) of the Upstream Act, the Minister is required to process all applications or bids for a PPL expeditiously and in any case not later than one hundred and eighty days after the Minister receives the application.

What are the conditions for commencement of production operations?

Under Section 69 of the Upstream Act, the holder of a petroleum exploration license who has made a discovery of petroleum in his or her exploration area has the exclusive right to apply for the grant of a petroleum production license over any block/blocks in that area which have following appraisal, been shown to contain a petroleum reservoir or part of a petroleum reservoir.

An application for a PPL must be made within 2 years after the date on which the technical evaluation of the test results are submitted to the Minister or within such longer period as the Minister may allow or as may be stipulated in the PSA.

Where the holder of an exploration license fails to apply for a PPL, the Minister may under Section 70 of the Upstream Act announce that such area is open for bidding for a PPL. The bidding under Section 70 is also open to persons who do not hold a PEL in respect of the exploration area.

An application for the grant of a PPL shall be accompanied by a report on the petroleum reservoir, a detailed field development plan and any relevant information that the Minister may reasonably require. An applicant for a PPL is prohibited from entering into any substantial contractual obligations or commencing construction work until a field development plan has been approved. It is the duty of the Petroleum Authority of Uganda to assess the field development plans and make recommendations to the Minister for approval, amendment or rejection of the plans. The development plan of an applicant is required to demonstrate that the applicant shall ensure the most efficient, beneficial and use of the petroleum resources concerned timely. The development plan must also take proper account of best petroleum industry practices and safety factors.

Under Section 72 (1) of the Upstream Act, the Minister is required to process all applications or bids for a PPL expeditiously and in any case not later than one hundred and eighty days after the Minister receives the application.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions when it comes to processing and refining oil and gas produced in your jurisdiction?

Under Section 9 of the Petroleum (Refining, Conversion, Transmission, and Midstream Storage) Act, 2013, a person interested in constructing or operating a facility for refining crude oil is required to obtain a license from the Minister of Energy. A person who operates without a license commits an offence.

What are the requirements and restrictions for the export of oil and gas produced in your jurisdiction? Please specify any applicable domestic supply requirements.

Under Section 76 (2) of the Upstream Act, a PPL may include a provision with respect to the duty and the extent of the duty, of the licensee to supply petroleum or petroleum products to meet the requirement of the local market.

Section 41 of the Petroleum (Refining, Conversion, Transmission, and Midstream Storage) Act, 2013 gives the Minister of Energy and Mineral Development the authority to direct a licensee to make supplies or deliveries from the licensee's facility to cover Ugandan requirements for petroleum commodities and products. The Minister may also direct to whom such petroleum products are to be delivered.

However, the Minister must give a licensee 45 days' notice before requiring them to make such a delivery.

Save for the above restrictions and compliance with the relevant customs clearances, a licensee is permitted to freely export its production entitlements.

SERVICES INDUSTRY

Is there a viable and competitive oil and gas services industry in your jurisdiction?

Uganda has a viable and competitive oil and gas services industry which has grown tremendously since the discovery of oil reserves in 2007. Uganda is preparing itself to begin commercial production of oil in 2025. Construction of the East African Crude Oil Pipeline (EACOP) from Hoima in Western Uganda to the port of Tanga in Tanzania is also underway to facilitate the exploitation of the oil in the country.

Uganda has also enacted several enabling laws and regulations to ensure that the regulatory environment is conducive for all players in the industry.

Uganda generally encourages determination of the price of oil and gas products and services by the free market. For instance, under Section 40 of the Petroleum (Refining, Conversion, Transmission, and Midstream Storage) Act, 2013, the licensee with the approval of the Authority, has the power to determine the gate price for petroleum products subject to the international import parity pricing principle and other regulations.

In addition, Section 32 of the Petroleum (Refining, Conversion, Transmission, and Midstream Storage) Act, 2013 prohibits the formation of cartels and monopolies to; fix prices, tariffs, levies or charges; restrict output; divide markets either by commodity or by area or; to allocate markets either by commodity or are to restrain free competition and contractual stipulation that prescribes pricing levels and margins at variance with the mechanisms approved by the Authority. The Act gives PAU the authority to take necessary measures to prevent the formation of cartels, monopolies and unfair competition in midstream operations and storage.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

The Upstream Act requires licensees, their contractors and sub-contractors to give preference to services which are rendered by Uganda citizens and companies.

Regulation 2 (2) of the National Content Regulations requires every licensee, operator, contractor, sub-contractor and any other entity involved in petroleum activities in Uganda to incorporate and implement national content as an important element of their overall petroleum activities.

The regulations reserve the provision of specified services for Uganda companies, citizens and registered entities. These include transportation, security, foods and beverages, hotel accommodation and catering, human resource management and locally available construction materials among others.

Both the Act and the Regulations stipulate that where the services required by the contactor or licensee are not available in Uganda, they are to be provided by a company which has entered into a joint venture with a Ugandan company provided that the Ugandan company has a share capital of at least forty-eight percent in the joint venture.

Further, a company shall not provide services for petroleum activities unless it is registered in the national supplier database

Are there compulsory local content requirements applicable in the operation of oil and gas services companies?

Regulation 2 (2) of the National Content Regulations requires every licensee, operator, contractor, sub-contractor and any other entity involved in petroleum activities in Uganda to incorporate and implement national content as an important element of their overall petroleum activities.

The National Content Regulations reserve the provision of specified goods and services for Uganda companies, citizens and registered entities. These include transportation, security, foods and beverages, hotel accommodation and catering, human resource management and locally available construction materials among others.

Licensees in all phases of petroleum activities are also required to make provision for the recruitment and training of Ugandans.

In addition, Section 39 of the Petroleum (Refining, Conversion, Transmission, and Midstream Storage) Act, 2013 also requires refineries or conversion plants in Uganda to give priority to petroleum commodities produced in Uganda whenever they are available.

ENVIRONMENTAL

What environmental approvals and obligations apply to oil and gas operations in your jurisdiction?

Section 3 of the Upstream Act requires a licensee in respect to petroleum activities to comply with environmental principles and safeguards prescribed by the National Environment Act 2019 and other applicable laws in respect to the production, transportation, storage, treatment and disposal of waste arising out of petroleum activities.

Under Section 113 and Schedule 5 of the National Environment Act 2019 and Regulation 6 of the National Environment

(Environmental and Social Assessment) Regulations, it is mandatory for persons involved in upstream and midstream petroleum operations to conduct an Environmental and Social Impact Assessment.

Section 3(3) of the Upstream Act requires a licensee to contract a separate entity to manage the transportation, storage, treatment or disposal of waste arising out of petroleum activities. However, under Section 3(4), the licensee remains responsible for the activities of the contractor. Regulation 47 of the Environment (Waste Management) Regulations also requires a person who generates hazardous waste to provide for proper storage of the waste, maintain sufficient information on the source, content and properties of the waste, ensure that waste is managed by an authorised waste handler.

Are there any consequences of a breach of environmental obligations for the rights holder?

The National Environment Act, 2019 and the regulations made thereunder prescribe punishments for breach of environmental obligations. The Act prescribes punishments such as fines, imprisonment and revocation of the licenses held under the Act.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

Under Section 153 (1) of the National Environment Act, 2019, the liability of a rights holder which is a body corporate may extend to its directors, managers, secretary or any other similar officer or a person purporting to act in such capacity where it is proven that the offence was committed with the connivance or consent of such person/officer or is attributable to their neglect.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Section 140 of the Upstream Act provides that petroleum activities shall be conducted in such a manner as to enable a high level of safety to be maintained and further developed in accordance with the technological developments, best petroleum industry practices, the Occupational Health and Safety Act, 2006 and any other applicable laws.

In addition, Petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations, 2016 set out the occupational safety and health obligations of oil and gas licensees in detail. The general duties of licensees under these regulations include the obligation to;

a) Prevent accidents, hazards and accidents and limit their consequences to human health and environment
b) To prevent and reduce the number of accidents among employees that are likely to result into loss of time for work, disability or fatality to the employees;
c) To ensure the occupational safety and health in all petroleum activities is satisfactory for the health and safety of employees and the environment
d) To comply with the requirements under the Occupational Health and Safety Act, 2006, etc

Licensees are also required to submit to the PAU a code of operations for the facility. In addition, licensees are required to prepare and submit to PAU at the beginning of each calendar year annual programs for; operation and maintenance, Hazard Operability (HAZOP) and Risk analysis and risk management.

Which entity is responsible for the enforcement of health and safety regulations or obligations?

The PAU has the mandate under Petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations, 2016 to enforce health and safety regulations in the oil and gas sector.

Are there any consequences of a breach of these requirements for the rights holder?

The Occupational Health and Safety Act, 2006 and the Petroleum (Exploration, Development and Production) (Health, Safety and Environment) Regulations, 2016 prescribe several offences and penalties for any licensee that may be found guilty of these offences. The penalties prescribed range from fines to imprisonment.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

Under Section 103 (4) of the Occupational Health and Safety Act, 2006, the liability for an offence committed by a company/body corporate may extend to its directors, managers, secretary or any other officer of the company where it proved that the offence was committed with the connivance or consent of such person/officer or was facilitated by any neglect on their part.

DECOMMISSIONING

What are the decommissioning and abandonment requirements and obligations for oil and gas rights holders in your jurisdiction?

A licensee is required to submit a decommissioning plan to the PAU before a petroleum production license or a specific license to install and operate facilities expires or is surrendered or before the use of a facility is terminated permanently.

The Upstream Act provides for the establishment of a decommissioning fund for each development area or for other facilities operated in relation a license or permit for the purpose of costs related to the implementation of the decommissioning plan. Payments into the decommissioning fund commence from the calendar quarter in which any of the following events occurs;

a) The petroleum production reached 50% of the aggregate recoverable reserves;
b) Five years before the expiry of the license; or
c) On notice of surrender.

Under Section 114 of the Act, the licensee is required to notify the authority of the time of termination of a facility if the use of the facility is expected to terminate permanently before the expiry of the license.

Upon decommissioning of facilities, PAU may issue directions relating to the disposal of the decommissioned facilities and the timeline for such disposal.

Where a license has been surrendered or has expired, or has by reason of relinquishment ceased to comprise any area subject to the license, the Minister has power under the Act to direct the person who was the licensee to do the following acts in a timeframe specified;

a) To remove or cause to be removed from the areas all the property brought into that area
b) To plug or close off, to the satisfaction of the Authority, all wells drilled in that area by any person engaged or concerned in those operations; and
c) To make provision to the satisfaction of PAU, for the conservation and protection of the natural resources in that area.

Failure of the former licensee to follow the directions of PAU or the Minister in relation to decommissioning activities entitles PAU, with the approval of the Minister to among others; sell, dispose of or take over the property in the area concerned.

Are there any particular events or timelines that trigger decommissioning obligations?

The Upstream Act requires a licensee to submit a decommissioning plan at the earliest four years and latest two years before the time when the use of a facility is expected to be terminated permanently. Upon decommissioning of facilities, PAU may issue directions relating to the disposal of the decommissioned facilities and the timeline for such disposal.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

Taxes; Companies in the oil and gas sector are subject to the following taxes;
a) Corporation Income Tax at a rate of 30%
b) Branch profit tax at a rate of 15% (applicable to non-residents)
c) Value Added Tax at a rate of 18%
d) Import duties; these vary from 0%-25%
e) Withholding tax on royalties, interest and dividends at a rate of 15%
f) Windfall profits tax; the Income tax Act was in 2021 amended to introduce a windfall tax. This applies where the international oil price equals USD 75 per barrel or more on any day of a year of income for specified contract areas. The tax is applied at a rate of 15% of net income less tax payable for a year of income. This is paid in addition to the corporate income tax and royalties.

Royalties; Under Section 154 of the Upstream Act, licensees are required to pay royalties to the Government on petroleum recovered at the delivery point in accordance with the PSA. Payment of royalties may be made in kind if it is provided for under the PSA. Where royalties are paid in cash, they must be paid in an international and freely convertible currency.

Signature bonus; Under Section 156 of the Upstream Act, a licensee who has been granted a PEL or PPL is required to pay to the government a signature bonus upon being granted such a license.

Are there any tax incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

There are several tax incentives in the oil and gas sector. These incentives are routinely granted as they are provided for in the various tax laws.

Some of the tax incentives for operators in the oil and gas sector include;

a) Reduced Withholding Tax rate for payments to non-resident contractors providing services in the oil and gas sector from 15% to 10% on gross payments for upstream field services and 5% for provision of professional and other services for the EACOP project.
b) A tax-compliant operator may be exempted from 6% local Withholding tax under Section 119 (5) (f) of the Income Tax Act.
c) Import duty exemption on equipment and inputs used in oil and gas; under the 5th Schedule of the East African Community Customs Management Act (EACCMA), equipment, input and goods for direct and exclusive use in oil and gas or geothermal exploration and development,

save for motor vehicles, are exempted from import duty upon recommendation by PAU or any other relevant authority.

d) Deemed VAT provisions; Under the Value Added Tax Act, VAT charged by the contractor to the licensee is deemed paid and therefore the contractor is not required to pay this VAT to the Uganda Revenue Authority (URA).

e) Credit for VAT input tax on imported services; Under Section 28(1) (b) of the ITA, licensees and contractors in oil and gas are allowed a credit for input tax on imported services as opposed to being charged VAT at a rate of 18%. The effect of the exemption is that the licensee or contractor ultimately pays zero VAT on imported services.

f) Uncapped carry forward losses for contractor and sub-contractor

What is the procedure for obtaining any applicable incentives and exemptions?

Applications for the applicable tax incentives and waivers are made online on the URA website. The application will be reviewed by the URA and approved if it meets all the criteria for the incentive/exemption.

STABILISATION RIGHTS

Are there any forms of stabilization rights granted to investors in the oil and gas sector?

The law does not provide for the grant of stabilisation rights to investors in the oil and gas sector in Uganda. However, the model PSA contains a stabilisation provision and it is understood that all PSAs executed by the government of Uganda contain stabilsation provisions.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

There is no threshold of investment required to be eligible for a stabilisation agreement.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

We understand that the enforcement of stabilisation clauses in the existing PSAs has not yet been tested. No licensee has formally requested the government for a review of the terms of its PSA based on a change in law event.

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

We are not aware of any issues that have arisen in respect to the scope and effect of stabilization agreements.

DISPUTES

Are there legally prescribed procedures for dispute resolution?

The Upstream Act does not specify the dispute resolution mechanism applicable to upstream disputes. However, the model PSA for petroleum exploration, development and production which was adopted in 2018 provides that where a dispute cannot be resolved within 120 days, it shall be referred to arbitration in accordance with the UNCITRAL Arbitration Rules before 3 arbitrators. The model PSA provides that the arbitration shall be conducted in London. However, the dispute resolution clause does not cover disputes concerning taxation, health, safety and environment which are to be resolved in accordance with the applicable local legislation.

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

Negotiation, mediation and arbitration are the most common forms of dispute resolution for oil and gas disputes in Uganda.

ZAMBIA
CORPUS LEGAL PRACTITIONERS

FIRM INFORMATION

Website address : **www.corpus.co.zm**
Languages spoken : **English**
Telephone : +260211372115
Address : Piziya Office Park, Stand No. 2374, Thabo Mbeki Road, Lusaka Zambia
Contact : Charles Mkokweza
Email : CMkokweza@corpus.co.zm

ZAMBIA I CORPUS LEGAL PRACTITIONERS

RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate the oil and gas sector?

The following statutes are the main sources of law regulating the oil and gas sector in Zambia
(a) the Constitution of Zambia Amendment Act No. 2 of 2016;
(b) the Petroleum (Exploration and Production) Act No. 10 of 2008 (the **"Petroleum Act"**);
(c) the Petroleum (Exploration and Production) (General) Regulations, Statutory Instrument No. 58 of 2011 (the **"Petroleum Regulation"**);
(d) the Energy Regulation Act No. 12 of 2019 (the **"Energy Act"**);
(e) the Energy Regulation (General) Regulations Statutory Instrument No. 41 of 2023;
(f) the Electricity Act No. 11 of 2019;
(g) the Environmental Management Act, No. 12 of 2011 (the **"EMA"**);
(h) the Environmental Management (Licensing) Regulations, Statutory Instrument No. 112 of 2013;
(i) the Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations, Statutory Instrument No. 28 of 1997 (the **"EIA Regulations"**);
(j) the Lands Act, Chapter 184 of the Laws of Zambia; and
(k) the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.

Which regulatory bodies administer the applicable laws and regulations? What are their powers and functions?

The regulatory bodies

(a) the Energy Regulation Board ("ERB");
(b) the Zambia Environmental Agency ("ZEMA");
(c) the Ministry of Mines and Minerals Development (the "Ministry of Mines");
(d) the Hydrocarbon Unit;
(e) the Petroleum Technical Committee; and
(f) the Petroleum Committee.

The Powers and Functions of the regulatory bodies

Pipeline transportation of crude oil, petroleum products and natural gas.

(a) ZEMA

ZEMA is established under the EMA and it is mandated to carry out functions related to issuing permits and licences and any matters relating to environmental management. ZEMA has an obligation to consider any activities in the oil and gas industry that have the potential of affecting the environment.

(b) The Ministry of Mines

The Ministry of Mines through the Minister performs various functions in the oil and gas sector pursuant to the Petroleum Act including:
(i) issuing of invitations for the bidding for the grant of a petroleum exploration licence;
(ii) giving directions to a holder of a petroleum licence on any issues in the oil field;
(iii) generally make regulations for the better implementation of the Energy Act.

(c) The Hydrocarbon Unit

The Hydrocarbon Unit is established by the Petroleum Act and its function is:;

- Implementing Government policy relating to the exploration for, and the development and production of petroleum;
- Monitoring the conduct of petroleum operations by holders of licences under the Petroleum Act;
- Receiving and processing bids and applications for licences; and
- Providing advice to, and information required by, the Minister.

(d) The Petroleum Technical Committee

The Petroleum Technical Committee is established under the Petroleum Act and has the following roles and functions

- evaluating applications for petroleum exploration licences and petroleum development and production licences;
- recommending the issuance or refusal of exploration licences and development and production licences;
- recommending the approval of work programmes and the expenditure budgets submitted by bidders for or holders of licences; and
- perform such other functions as are provided for under the Petroleum Act or as may be assigned to it by the Petroleum Committee or the Ministry.

(e) The Petroleum Committee

The Petroleum Committee as established under the Petroleum Act has the following roles and functions;

- formulating policies relating to the exploration for and the development and production of petroleum in Zambia;
- approving the constitution of blocks under the Petroleum Act;
- approving applications for licences and renewal of the licences;
- determining conditions applicable to the licences;

- approving the suspension, cancellation or transfer of licences issued; and
- performing any other functions that may be necessary.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

Who has title to oil and gas resources?

The Petroleum Act prescribes the President of the Republic as the exclusive owner of all property and control over petroleum and accompanying substances in whatever physical state, located on any land in Zambia on behalf of the State.

What rights are granted to undertake exploration and production operations and who qualifies to acquire such rights in your jurisdiction?

Rights to undertake exploration and production operations in Zambia are granted under the various licences issued pursuant to the Petroleum Act. There are two (2) types of petroleum licences that may be issued under the Petroleum Act:

(a) the Petroleum Exploration Licence (the "Exploration Licence") which entitles the holder of the licence the exclusive rights to:

(i) explore for petroleum in the exploration area; and
(ii) to carry on such operations and execute such works as are necessary for that purpose.

(b) the Petroleum Development and Production Licence (the "Development and Production Licence") which confers on the holder of the Development and Production Licence the exclusive rights to –

(i) carry on exploration, development and production operations in the development and production area; and
(ii) carry on such operations and execute such work in the development and production area as may be considered necessary for the purpose of carrying into effect the provisions of the Act.

Who qualifies to acquire petroleum exploration and production rights in Zambia?

The Petroleum Act allows for anyone to acquire the rights above. However, the Act disqualifies the following from acquiring petroleum rights;

(a) an individual who –

- is under the age of eighteen (18) years;
- is or becomes an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any written law, or enters into any agreement or scheme of composition with creditors, or takes advantage of any legal process for the relief of bankrupt insolvent debtors; or
- has been convicted within the previous ten (10) years of an offence involving fraud or dishonesty, or of any offence under the Act or any other law within or outside Zambia, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding ZMW 15,000 (approximately USD 715)

(b) a company –

- which has not established an office in Zambia;
- unless, in the case of a Development and Production Licence, the company is incorporated under the Companies Act;
- which is in liquidation other than liquidation which forms part of a scheme for the reconstruction of the company for its amalgamation with another company; or
- which has among its directors or shareholders any person who would be disqualified under (a) above.

Please provide an overview of the procedure for obtaining such exploration and production rights.

The process for the acquisition of a licence is initiated by the Minister, who by way of a notice published in the Gazette and in two newspapers of general circulation in Zambia, issues invitations for bids for the grant of an Exploration Licence in respect of any block or blocks. The notice is required to include;

(a) a description of the blocks for which the bids are to be solicited;
(b) the procedures and conditions relating to the submission of the bids; and
(c) the period within which the bids should be submitted.

When submitting a bid, the following should be included;

(a) full information regarding the bidders financial status, technical competence and experience;
(b) a description of the area constituted by the blocks in respect of which the bid is being made;
(c) the proposed programme of exploration operations and the estimated cost of the proposed exploration operations;
(d) the bidder's proposals with respect to the employment and training of citizens of Zambia;
(e) the bidder's proposals for the promotion of local business development'
(f) the environmental commitment plan;
(g) a tax clearance certificate issued under the Income Tax Act; and
(h) such further information as the Minister may, by Statutory instruments prescribe.

The Minister is required to refer all the submitted bids to the Technical Committee for evaluation, within five (5) days of the expiry of the prescribed time within which bids should be submitted. Where a bid complies with the requirements above, the Technical Committee shall recommend to the Committee that the bidder with the best proposed programme be granted a Exploration Licence.

A person whose bid is successful may apply for an Exploration Licence to the Minister. The application is made by completing Form III of the Petroleum Regulations. This form must be accompanied by the following attachments:

(a) in the case of an individual applicant, a photocopy of the national registration card of the individual and in the case of a company, a certificate of incorporation;
(b) a report on execution of past operations programme, training and employment of Zambians, execution of local business development plan, where applicable;
(c) particulars of technical qualifications and industrial experience of bidders and key employees;
(d) particulars of financial resources available to the bidder including capital credit facilities and guarantees available as evidence of the bidder's ability to finance the proposed work;
(e) proposed programme of exploration operations and the estimated cost of the proposed exploration operation;
(f) Environmental Commitment Plan; and
(g) evidence allowing the Power of Attorney with ability to sign on behalf of the bidder company.

The Minister will within five (5) days of receiving the application or information as requested for, forward the application to the Technical Committee for consideration. The considerations of the Technical Committee include the following;:

(a) that the applicant has, or has secured access to, adequate financial resources, technical competence, and experience to carry on effective exploration operations;
(b) that the proposed programme of exploration operations is adequate and makes proper provision for environmental protection;
(c) that the proposed exploration area is not the same as, nor does it overlap an existing exploration area; and
(d) if the applicant is a holder of another Exploration Licence, the applicant has not contravened any condition of the licence or any provision of the Petroleum Act.

In light of the above, an applicant has to ensure that they meet these requirements to be granted an exploration licence.

In respect of production, a holder of an Exploration licence whose licence is in force in respect of a discovery block may, within two (2) years immediately following the date on which the discovery was made or any further period that the Minister may allow, apply for the grant of a Development and Production Licence. The Application has to encompass the following details:
(a) full information as to the applicant's financial status;
(b) the number of the applicant's Exploration Licence, if applicable;
(c) the form of petroleum which it is intended to produce;
(d) a comprehensive report of the petroleum deposit, which report shall include a description of the petroleum reservoir or deposit, the form of the petroleum and an estimate of the petroleum reserves;
(e) details, illustrated by an approved plan, of the area in respect of which the application is made;
(f) a technological report on production and processing possibilities and the intention of the applicant in relation thereto;
(g) a proposed programme of production and processing operations which shall include; (i) the date by which the applicant intends to work for profit; (ii) the capacity of production and scale of operations; (iii) the estimated overall recovery of petroleum and by products, (iv) the nature of the petroleum and by products. (v) the marketing arrangements made for the sale of the petroleum and by-products, and (vi) a detailed programme for the progressive reclamation and rehabilitation of lands disturbed by petroleum extraction and for the minimization of the effect of such extraction on adjoining land or water area;
(h) a detailed forecast of capital investment, operating costs and sales revenues and the anticipated type and source of financing:
(i) proposals with respect to the employment and training of Zambian citizens;
(j) a report of the goods and services required for the production and processing operations which can be obtained within Zambia and the applicant's intention in relation thereto;
(k) details of expected infrastructure requirements;
(l) a resettlement plan; and
(m) such further information as the Minister may by statutory instrument prescribe.

Are there any fees and charges applicable to obtaining these rights?

The Petroleum Regulations prescribe the following fees;

(a) Application fees for Exploration Licence and renewal - ZMW 7,916.70 (approximately USD 377)

(b) Application fees for a Development and Production Licence - ZMW 15,833 (approximately USD 754)

What is the duration of the exploration and production rights?

(a) an Exploration Licence is valid for four (4) years

(b) a Development and Production Licence is valid for twenty-five (25) years.

What are the renewal processes?

Yes.

An Exploration Licence may, on its expiry, be renewed for two further periods not exceeding three years each, while the period of renewal of a Development and Production Licence shall be for such period, not exceeding twenty years, as the Minister may, with the approval of the Technical Committee determine to be reasonably necessary in accordance with good oil field practices to recover from the production area, the maximum amount of petroleum.

Does the state have any direct or indirect right or interest in exploration, development and production operations?

The Petroleum Act allows the State to carry out petroleum operations either on its own or in a joint venture with a holder of a Exploration Licence or a Development and Production Licence. It is worth noting that where there is no joint venture with the State, a licence holder has exclusive rights to undertake operations over a licence area.

INDIGENISATION REQUIREMENTS

Are there any local participation requirements with respect to the acquisition of exploration and production rights in your jurisdiction?

There are no local participation requirements in relation to the acquisition of exploration and production rights in Zambia.

Are there any special rules or restrictions applicable to foreign persons seeking to acquire exploration and production rights?

No. However, only companies incorporated in Zambia can own exploration and production rights.

Are there any specific local content requirements in the oil and gas industry in your jurisdiction?

the Petroleum Act to give preference to Zambian resources.

For instance, where a party makes a bid to acquire an Exploration Licence, the committee will consider the bidder's proposals with respect to the employment and training of citizens of Zambia and the bidder's proposals for the promotion of local business development.

Secondly, when applying for a Development and Production Licence the Minister considers proposals with respect to the employment and training of Zambian citizens and a report of the goods and services required for the production and processing operations which can be obtained within Zambia and the applicant's intention to use the Zambian goods and services.

Further, the Petroleum Act requires that a holder of a licence in conducting petroleum operations under the licence, in the purchase, construction and installation of facilities to give preference to the maximum extent possible consistent with safety, efficiency and economy; to –

(a) Materials and products made in Zambia; and
(b) Service agencies located in Zambia and owned by Zambian citizens or bodies corporate registered under the Companies Act.

A holder of a licence is also required to give preference in employment to citizens of Zambia to the maximum extent possible in all phases of the holder's operations.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS AND CREATION OF SECURITY

What are the requirements, consents or restrictions, if any, for the transfer or assignment of exploration and production rights? What fees, taxes, or other charges apply to such transfers?

Requirements

The transferee must be a company incorporated in Zambia and not restricted from holding exploration and production rights.

Consents

A holder of an Exploration Licence who intends to transfer the licence or any interest therein is required to notify the Minister not less than thirty (30) days before the date of the transfer.

A holder of an Exploration Licence must give to the Minister such details of the transferee as would be required in the case of an application for an Exploration Licence, which we have set out in question 2 above.

Where the Minister is satisfied that the transferee is not disqualified under any provision of the Petroleum Act from holding an Exploration Licence, the Minister shall, with the approval of the Technical Committee, authorise the transfer of the exploration licence and notify the applicant accordingly.

Restrictions

The Petroleum Act prohibits the transfer of a licence without the approval of the Minister.
In respect to production rights, the laws regulating petroleum production do not expressly address such transfer. However, we contacted the Ministry of Mines, on a no names basis to enquire on the procedure to be followed with respect to the transfer of a Development and Production Licence. We were verbally informed that the process applicable to the transfer of exploration rights equally applies to production rights. We were also informed that currently, no one holds a Development and Production Licence in Zambia.

What fees, taxes or other charges apply to such transfers?

The laws regulating petroleum in Zambia provide a fee of ZMW 9,000 (approximately USD 430) for the transfer of the licence or rights derived from such a licence. It is also worth noting the following annual fees payable by the holder of a licence, as the fees will become a liability to be incurred by the transferee annually once the transfer has been effected;

(a) Exploration annual fees – ZMW 90,000 (approximately USD 4,286)
(b) Production annual fees – ZMW 305,833 (approximately USD 14,563)

Are there any restrictions or requirements on the change of control in entities holding exploration and production rights?

Yes

A company that holds a licence cannot, after the date of the grant of the licence, without the written consent of the Minister;

(a) register the transfer of any share or shares in the company to any particular person or that person's nominee; or
(b) enter into an agreement with any particular person, if the effect of doing so would be to give that person control of the company.

What conditions are applicable for the grant of governmental consent/approval for the transfer or assignment of exploration and production rights or change of control?

The Minister will give approval for the transfer of an Exploration Licence where the transferee –

(a) is a person controlling, controlled by or under common control with the transferor; and
(b) is not a person disqualified under any provision of the Petroleum Act from holding an Exploration Licence as discussed in 2 above.

Are rights holders allowed to create security over their exploration and production rights?

Yes, with the approval of the Minister. Where approval is not obtained from the Minister such security will have no effect on the licence.

EXPLORATION, DEVELOPMENT AND PRODUCTION

Are there any prescribed durations for exploration operations?

Yes. Exploration operations are valid for four years and renewable for two further periods not exceeding three years each.

Are there any prescribed minimum work and expenditure obligations for exploration operations?

No.

The licence stipulates the work and expenditure obligations on a case-by-case basis

Are there any compulsory relinquishment requirements?

Yes.

The holder of a licence is required to relinquish 50% of the initial exploration area in the first renewal and at least 50% of the balance in the second renewal.

What are the conditions for transitioning from exploration to development and production?

A holder of an Exploration Licence whose licence is in force in respect of a discovery block may, within two development years immediately following the date on which a commercial and production discovery was made, or such further period as the Minister may allow, apply for the grant of a Development and Production Licence in respect of the discovery block or a part of it.

The application must contain the following:

(a) full information as to the applicant's financial status, technical competence and experience;
(b) the number of the applicant's exploration licence, if applicable;
(c) the form of petroleum which it is intended to produce;
(d) a comprehensive report of the petroleum deposit, which report should include a description of the petroleum and an estimate of the petroleum reserves;
(e) details, illustrated by an approved plan of the area in respect of which the application is made;
(f) a technical report on production and processing possibilities and the intention of the applicant in relation thereto;
(g) a proposed programme of production and processing operations which should include-the date by which the applicant intends to work for profit, the capacity of production and scale of operations, the estimated overall recovery of petroleum and by-products, the marketing arrangements made for the sale of the petroleum and by-

products, and a detailed programme for the progressive reclamation and rehabilitation of lands disturbed by petroleum extraction and for the minimisation of the effect of such extraction on adjoining land or water area;
(h) a detailed forecast of capital investment, operating costs and sales revenues and the anticipated type and source of financing;
(i) proposals with respect to the employment and training of Zambian citizens;
(j) a report of the goods and services required for the production and processing operations which can be obtained within Zambia and the applicant's intention in relation thereto;
(k) details of expected infrastructure requirements;
(l) a resettlement plan; and
(m) such further information as the Minister may, by statutory instrument, prescribe.

Within five (5) days of receiving the application, the Minister will forward it to the Technical Committee which considers the application and makes such investigations and consultations that it deems necessary to determine whether to grant the licence or not. The Technical Committee after considering the application may recommend to the Petroleum Committee that the applicant be granted the licence.

The Minister may thereafter grant the licence with the approval of the Petroleum Committee.

What are the conditions for commencement of production operations?

Once a development and production licence has been obtained, a licence holder has the exclusive right to commence production operations.

PROCESSING, REFINING AND EXPORT

What are the requirements and restrictions when it comes to processing and refining oil and gas produced in your jurisdiction?

Requirements
An entity that intends to refine petroleum products or process natural gas is required to obtain a licence from the ERB.

Restrictions

The Energy Act prohibits undertaking any development or production of petroleum activities without a valid licence.

What are the requirements and restrictions for the export of oil and gas produced in your jurisdiction? Please specify any applicable domestic supply requirements.

Requirements

One must hold a distribution, importation and exportation of petroleum produce licence before they can undertake any petroleum exportation activities. . However, the Zambian Government through the Ministry of Energy or ERB can restrict the exportation of petroleum products if required. It is worth noting that currently Zambia does not produce petroleum products and as such is not an exporter of petroleum products.

Restrictions

The Energy Act prohibits conducting licenced activities including exportation activities without a valid licence.

SERVICES INDUSTRY

Is there a viable and competitive oil and gas services industry in your jurisdiction?

The industry for oil and gas services relating to exploration and production is not as competitive and highly developed as the downstream petroleum sector.

What are the entry requirements for oil and gas services companies? Please indicate in particular any local participation requirements.

The Companies Act requires the company to be incorporated at the Patents and Companies Registration Agency (**"PACRA"**). The application for incorporation has to contain:

(i) the name and address of the individual lodging the application;
(ii) the proposed name of the company;
(iii) the physical address of the office to be the registered office of the company;
(iv) the registered postal address, electronic mail address and phone number of the company where available;
(v) the type of company to be formed;
(vi) the particulars of persons who shall be the first directors of the company;
(vii) the particulars of persons who shall be the first secretary or joint secretaries of the company;
(viii) the nature of the company's proposed business or proposed activity.
(ix) amount of share capital of the company;
(x) the division of the share capital into shares of a fixed amount; and
(xi) number of shares each subscriber has agreed to guarantee.

Are there compulsory local content requirements applicable in the operation of oil and gas services companies?

No. However, all companies (oil and gas inclusive) are required to have at least half of their director's resident in Zambian[37] Further, where there is a vacancy in the Company, Zambians have to be given priority, except where the Zambians do not possess the required skills.

ENVIRONMENTAL

What environmental approvals and obligations apply to oil and gas operations in your jurisdiction?

The environmental impact assessment ("EIA") Regulations provide that where a project is likely to have an impact on the environment, a project brief or EIA must be prepared. Thus, a holder of a licence has the duty to ensure that any exploration or production activity being undertaken does not cause any adverse socio-economic impact or harm to human health in or on land over which the licence is sought. To ensure compliance, the Minister may require that before a licence is granted, an EIA is conducted in accordance with the EMA and the EIA Regulations before a decision to grant a licence may be made.

Are there any consequences of a breach of environmental obligations for the rights holder?

Where one is in breach of the environmental obligation to ensure that no harm is caused to the environment as a result of the activities being undertaken, the EMA prescribes a fine of ZMW 210,000 (approximately USD 10,000) or imprisonment for a period not exceeding seven (7) years. Further a civil action may be undertaken by private individuals who are affected or likely to be affected by the breach as a violation of their right to a clean environment.

Does the liability of the rights holder for breach of environmental obligations extend to its shareholders, directors, managers and employees?

Liability of a licence holder extends to its directors or managers upon conviction, as if the director or manager had personally committed the offence, unless such a director or manager can prove to the satisfaction of the Court that the breach constituting an offence was done without the knowledge, consent or connivance of that director or manager or that the director took reasonable steps to prevent the commission of the offence.

HEALTH AND SAFETY

Are there any health and safety requirements for oil and gas rights holders in your jurisdiction?

Yes, Part X of the Petroleum Act provides for safety, health and environmental protection measures. In particular, the Act provides that in deciding whether or not to grant a licence, the Minister is expected to take into account the need to conserve various aspects of the environment including, air, water, soil, fauna, among others. Additionally, the Minister is required to stipulate conditions for licences in relation to the rehabilitation, leveling, regressing, reforesting or contouring of land damaged by exploration or development and production activities. There is also provision for the establishment of a Petroleum Environmental Protection Fund that is to be utilized in the event that a licence holder fails to carry out environmental restoration measures following cessation of activities for which the licence is given.

Also, Part IV of the Occupational Health and Safety Act provides for health and safety in the workplace. Particularly, it provides that notwithstanding any other written law, an employer shall ensure so far as is reasonably practicable, the health, safety and welfare of the employees of the employer at a workplace and maintain a workplace in a condition that is safe and without any risk to the health and safety of employees at their workplace. An employer must also provide plants and systems of work that are, so far as is reasonably practicable, safe and without any risks to human health and maintain them in that condition (S.16 of OHS Act)

Additionally, the Petroleum Act provides for the protection of human health (in consultation with the Minister responsible for health) as one of the conditions to be considered by the Minister prior to granting or renewing a licence. [S.67 (1)(b)]

Which entity is responsible for the enforcement of health and safety regulations or obligations?

The Occupational Health and Safety Institute.

Are there any consequences of a breach of these requirements for the rights holder?

Yes. Where an oil and gas company contravenes the requirements set out above it will be deemed to have committed an offence and is liable, upon conviction, to a fine not exceeding ZMW 150,000 (approximately USD 7,143) or to imprisonment for a period not exceeding five years, or to both.

Does the liability of the rights holder for breach of health and safety obligations extend to its shareholders, directors, managers and employees?

Liability extends to any person who directly contributes to the act or omission which results in the harm or damage.

DECOMMISSIONING

What are the decommissioning and abandonment requirements and obligations for oil and gas rights holders in your jurisdiction?

The Petroleum Act regulates the abandonment of oil and gas operations. The holder of a licence may surrender all or any of the blocks subject to the licence by-

(a) giving to the Minister not less than three months' notice of the holder's intention to surrender all or any of the blocks concerned;
(b) applying to the Minister for and obtaining a certificate of surrender; and
(c) complying with such conditions as the Minister may determine.

A surrender, however, does not absolve the holder of a licence from any liabilities or obligations incurred by the holder in relation to the block surrendered prior to the date of surrender.

The conditions that the Minister may impose could include the requirement to decommission the operations.

Are there any particular events or timelines that trigger decommissioning obligations?

No. The Petroleum Act does not provide for any particular events or timelines that may trigger decommissioning obligations.

FISCAL REGIME

What taxes are levied in the oil and gas sector in your jurisdiction?

Below are the taxes applicable to the oil and gas sector

(a) Income Tax;
(b) Value Added Tax (charged at 16%);
and
(c) Withholding tax for employees referred to as 'Pay as You Earn'.

Are there any tax incentives and exemptions available in the oil and gas sector? Are these incentives and exemptions routinely granted?

Tax incentives and exemptions are regulated under the Investment, Trade and Business Development Act No. 18 of 2022 (the **"ITBD Act"**). The ITBD Act provides that an investor shall not be entitled to an incentive under the Act unless the investor holds a valid licence, permit or certificate of registration issued under the Act.

An investor is eligible for incentives if the investor invests in:
(a) Special economic zones; or
(b) Business operating in a priority sector or rural area.

Further an investor shall be eligible for an incentive under the Act if the investor is –
(a) a local investor investing a minimum of fifty thousand United States Dollars or equivalent in convertible currency;
(b) a citizen owned company investing a minimum of one hundred thousand United States Dollars or equivalent in convertible currency;

(c) a citizen empowered company investing a minimum of one hundred and fifty thousand United States Dollars or equivalent in convertible currency;
(d) a citizen influenced company investing a minimum of five hundred thousand United States Dollars or equivalent in convertible currency; or
(e) investing one million United States Dollars or equivalent in convertible currency.

We confirm that the incentives are granted routinely provided the necessary criteria is met. We have attached hereto the types of tax incentives granted by the ZDA.

What is the procedure for obtaining any applicable incentives and exemptions?

A person may apply to the Zambia Development Agency (the **"ZDA"**) for a licence, permit, certificate or registration in the prescribed manner and form and on payment of the prescribed fee, where that person intends to –

(a) develop any premises as a special economic zone;
(b) operate a business in a priority sector as prescribed;
(c) register a business; or
(d) operate a business in a rural area for purposes of the ITBD Act.

A relief or exemption from any tax or duty to which an investor is eligible under the ITBD Act will be effected by the Minister responsible for Finance after the ZDA certifies that the investor has complied fully with the provisions of the Act and any conditions prescribed.

STABILISATION RIGHTS

Are there any forms of stabilization rights granted to investors in the oil and gas sector?

Yes.

The Constitution Act No. 2 of 2016 provides that the Government shall promote local and foreign investment and guarantee such investment through agreements with investors and other countries. The Constitution further prohibits the compulsory acquisition of investments except under customary international law and subject to Article 16 of the Constitution.

Further, the ITBD Act provides for the stabilization rights of investors, which include;

(a) Subject to the approval of the Minister and Attorney-General, the ZDA may enter into an investment protection and promotion agreement on behalf of the Government with an investor in which parties shall agree on development and investment matters provided under the Act; and

(b) An investor's property or interest in or right over, that property shall not be compulsorily acquired except in accordance with the law.

Is there a threshold of investment required to be eligible for a stabilisation agreement?

An investor must hold an investment licence, permit, or certificate of registration in order to be eligible to enter into a stabilization agreement.

Does the government (and its agencies) comply with the terms of any stabilisation agreements?

Yes

Are there any common issues that arise for investors in respect of the scope and effect of stabilisation agreements?

We are not aware of any issues that arise for investors with respect to stabilization agreements especially if the investor was compliant with the terms of the agreement.

DISPUTES

Are there legally prescribed procedures for dispute resolution?

The Petroleum Act prescribes Arbitration as a means of resolving disputes relating to restrictions on exercise of rights under licences and surface rights.

If not, what dispute resolution procedures are usually employed in resolving oil and gas disputes in your jurisdiction?

Though not expressly provided for in relation to all disputes arising in the oil and gas sector, Arbitration is the usual and preferred form of dispute resolution.

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Website: www.lexafrica.com | **Email**: LEXenquiries@werksmans.com